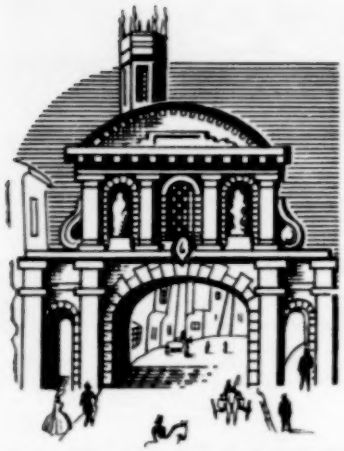

JUSTICE OF THE PEACE & LOCAL GOVERNMENT REVIEW

Saturday, June 18, 1955 **Vol. CXIX. No. 25**

Official & Classified Advertisements, etc.

Official Advertisements (Appointments, Tenders, etc.), 2s. 6d. per line and 3s. 6d. per displayed headline. Classified Advertisements, 24 words 6s. (each additional line 1s. 6d.) Box Number, 1s. extra *Latest time for receipt 2 p.m. Wednesday*

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NOTIFICATION OF VACANCIES ORDER, 1952

The engagement of persons answering these advertisements must be made through a Local Office of the Ministry of Labour or a Scheduled Employment Agency if the applicant is a man aged 18-64 or a woman aged 18-59 inclusive unless he or she, or the employment, is excepted from the provisions of the Notification of Vacancies Order, 1952. *Note :* Barristers, Solicitors, Local Government Officers, who are engaged in a professional, administrative or executive capacity, Police Officers and Social Workers are excepted from the provisions of the Order.

HAMPSHIRE COMBINED PROBATION AREA

Appointment of a Full-time Female Probation Officer

APPLICATIONS are invited from persons who have had experience and/or training as Probation Officers for the appointment of a full-time Female Probation Officer for the above area. Candidates must be not less than 23 nor more than 40 years of age (except in the case of serving officers).

The appointment and salary will be in accordance with the Probation Rules, and the salary will be subject to superannuation deductions.

Applications, giving particulars of age, education, present salary, qualifications and experience, with the names and addresses of not more than three persons to whom reference may be made, should be submitted to the undersigned not later than June 30, 1955. Canvassing, either directly or indirectly, will be a disqualification.

G. A. WHEATLEY,
Secretary of the Probation Committee.

The Castle,
Winchester.
June 6, 1955.

LANCASHIRE (No. 10) COMBINED PROBATION AREA COMMITTEE

Appointment of Full-time Male Probation Officer

APPLICATIONS are invited for the appointment of a Full-time Male Probation Officer to serve in the Wigan area. Applicants must be not less than 23 years nor more than 40 years of age unless at present serving as full-time probation officer.

Salary and appointment will be subject to the Probation Rules, 1949, as amended. The successful applicant will be required to pass a medical examination.

Applications, stating age, qualifications and experience, should be sent with copies of two recent testimonials to the undersigned not later than June 27, 1955.

NICHOLAS TUITE,
Secretary to the Probation Committee.

G.P.O. Box 32,
Royal London House,
King Street, Wigan.

MIDDLESEX COMBINED PROBATION AREA

Appointment of Full-time Male Probation Officer

APPLICANTS must be not less than 23 nor more than 40 years of age, except in the case of a serving Probation Officer, and have recognized social science qualifications or experience in social case work. Appointment and salary according to Probation Rules, 1949/55 with £30 per annum Metropolitan Addition; subject to superannuation deductions and medical assessment. Application forms, from undersigned, returnable by July 14, (quote Q.685 J.P.).

A. G. GRAVES,
Clerk to the County Probation Committee.

Guildhall,
Westminster, S.W.1.

HARLOW DEVELOPMENT CORPORATION

LAW Clerk required in Chief Solicitor's Department. Salary £565 × £30—£715 per annum. Superannuation. Dwelling accommodation available in due course in suitable cases. Duties mainly concerned with general legal work, including some litigation.

Applications, with names of two referees, to the General Manager, "Terlings," Harlow, Essex, within 14 days. Envelopes should be endorsed "Law Clerk."

CITY OF LIVERPOOL

Town Clerk's Department

APPLICATIONS are invited for the appointment of Assistant Prosecuting Solicitor. Salary: £1,412 10*s.* × £52 10*s.*—£1,622 10*s.* per annum.

Application forms, returnable by July 2, 1955, together with details of duties and conditions of appointment, may be obtained from the undersigned.

The appointment is superannuable and subject to the Standing Orders of the City Council. Canvassing disqualifies.

THOMAS ALKER,
Town Clerk.

Municipal Buildings,
Liverpool, 2. (J.A. 3966).

BOROUGH OF CHELTENHAM

Junior Assistant Solicitor

APPLICATIONS are invited for this appointment which is principally concerned with conveyancing. The salary will be in the scale £690 per annum rising to £780 per annum. Previous service with a local authority is not essential.

The appointment will be subject to the National Conditions of Service, to the Superannuation Acts and to a medical examination, and will be terminable by one month's notice.

Applications, stating qualifications and experience, with copies of three recent testimonials, should be received not later than June 30, 1955.

F. D. LITTLEWOOD,
Town Clerk.

P.O. Box No. 12,
Municipal Offices,
Cheltenham.

BOROUGH OF WHITEHAVEN

Town Clerk's Department

SECOND Assistant required for legal and administrative work. Previous legal experience (including conveyancing) essential. Opportunity of obtaining varied experience. Salary Grade II £560—£640.

Housing and removal expenses on terms. Medical examination and superannuation. Applications, with three referees or copy testimonials, to Town Clerk before Saturday, July 2.

W. H. J. BROWNE,
Town Clerk.

Whitehaven.

BOROUGH OF EPSOM AND EWELL

Assistant Solicitor

APPLICATIONS are invited for the appointment of Assistant Solicitor. Salary—Grade A.P.T. V (£750—£900 per annum) plus London area weighting allowance (£30 per annum). Commencing salary dependent upon experience and qualifications. Superannuable post, subject to medical examination. N.J.C. conditions apply.

Candidates must have had previous experience of conveyancing and advocacy, and local government experience will be an advantage.

Applications, stating age, present and previous appointments, qualifications and experience, together with the names of two referees, must be sent to the undersigned not later than July 4, 1955. Canvassing will disqualify.

EDWARD MOORE,
Town Clerk.

Town Hall,
The Parade, Epsom.
June 17, 1955.

HARLOW DEVELOPMENT CORPORATION

LAW Clerk required in Chief Solicitor's Department. Salary £565 × £30—£715 per annum. Superannuation. Dwelling accommodation available in due course in suitable cases. Duties mainly concerned with conveyancing but successful applicant will be expected to assist in the general legal work of the office.

Applications, with names of two referees, to General Manager, "Terlings," Harlow, Essex, within 14 days. Envelopes should be endorsed "Law Clerk."

Justice of the Peace
and
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REPORTS

NOTES OF THE WEEK

"Driving" a Run-away Car

The brief report in *The Times* (May 27, 1955) of the case of *R.* v. *Kitson*, raises some alarming possibilities. According to the reported judgment the facts were that the accused, who was a passenger in a car driven by his brother-in-law, had fallen asleep and woke to find no one in the driving seat and the car moving of its own volition. The ignition key was missing and the hand-brake was off. The car was followed by police for 300 *yds.* down hill, at the end of which it mounted a grass verge and stopped. The brother-in-law then ran up. The accused said he found the car moving and grabbed the steering wheel and tried to control the car; that he did not apply the hand-brake because of the greasy state of the road. There was abundant evidence that he was under the influence of drink and unfit to exercise proper control of a vehicle. The Queen's Bench Division held that it was impossible to say he was not driving the car. The car was subject to his control and direction and he had steered it on to a grass verge. A sentence of four months' imprisonment and disqualification for three years imposed by quarter sessions was upheld.

The report is brief and in due course a further report will no doubt be available, but it would seem clear that the defence was that the car was a "run-away," that the accused was a passenger up to the moment he woke, and that thereafter he had taken steps to bring the run-away car under control. It may well be that those steps were inadequate but that may not be relevant as the position in which the accused found himself was not of his own making and the alternatives facing him were all equally uncomfortable. There would seem to be three possible courses in such circumstances—to jump from the car; to try to control it; to sit tight and hope for the best. The first and last courses are likely to lead to personal injury, apart from the dangers resulting from an uncontrolled car careering down a hill. The middle course would appeal to most sensible persons, especially if they were capable of driving.

The decision of the Court seems to be that a person taking this middle course becomes the driver of a motor vehicle on a road, subject, it follows, to all the laws governing such a person. If he is sufficiently under the influence of drink he commits an offence against s. 15 of the Road Traffic Act and can be sent to prison. Clearly, his use of the car must also be covered by insurance; he must not exceed the speed limit; he must observe traffic signs and stop at a police officer's signal; he must hold a driving licence and if it is a provisional licence he must have a licensed driver with him and carry L-plates; if the vehicle is carrying goods he may require a licence from the Traffic Commissioners and the vehicle must not be overloaded. The possibilities are endless — and frightening.

The main point for the Court was whether there was sufficient evidence on which the accused could be found to be driving, and one can only think that the defence was not accepted in its entirety. The full report will be awaited with some interest.

Earlier Cases

There have been various cases on what is meant by being in charge of a motor vehicle, and what constitutes driving. Some of these were cited in *R.* v. *Kitson*, *supra*.

In *Wallace* v. *Major* [1946] 2 All E.R. 87; 110 J.P. 231, upon a charge of dangerous driving, a man who at the time of an accident was at the wheel of a motor lorry which was by reason of a mechanical defect incapable of proceeding under its own power and was being towed by another lorry was held not to be a driver, he being merely at the steering wheel and having nothing to do with the propulsion of the vehicle.

In *Saycell* v. *Bool* [1948] 2 All E.R. 83; 112 J.P. 341, the defendant, who was at the time disqualified from driving, released the brake of a lorry which he owned, and which was standing at the head of an incline and steered it down the road into his garage a distance of about 100 *yds.* The engine was not

started and there was no petrol in the tank. He was held guilty of driving while disqualified.

The general effect of the case law is to tighten up the provisions relating to being in charge of a vehicle or driving it. This is particularly noticeable in relation to being in charge, and there have been suggestions that by statute there should be some modification of the law, and that being in charge when neither driving nor intending to drive should be made a less serious offence.

One may speculate upon what the position would have been in the case of *R.* v. *Kitson, supra,* if the defendant had sat still and done nothing at all. There might well have been an accident, but apparently he would have committed no offence. If he had been prosecuted as being in charge of the car, he would no doubt have pleaded that his brother-in-law, not having transferred the charge to him remained in charge of the car, *Haines* v. *Roberts* [1953] 1 All E.R. 344; 117 J.P. 123, and that he, the defendant, remained a mere passenger.

Proof of Foreign Marriage

A practice direction from the Probate, Divorce and Admiralty Division, printed at [1955] 2 All E.R. 465, is as follows: " With the object of avoiding unnecessary costs, the attention of practitioners is directed to the Evidence (Foreign, Dominion and Colonial Documents) Act, 1933, and the Orders in Council made under it [in particular the Evidence (Belgium) Order, 1933 (S.R. & O. 1933, No. 383), and the Evidence (France) Order in Council, 1937 (S.R. & O. 1937, No. 515)] and to the case of *North* v. *North* (1936) 105 L.J.P. 56.

" The effect of these orders is, *inter alia,* that expert evidence is not normally required to establish the validity of Belgian or French marriages in matrimonial proceedings."

By s. 1 of the Act of 1933 it is enacted that if upon a report from the Lord Chancellor and a Secretary of State, Her Majesty in Council is satisfied with respect to any country that, having regard to the law of that country as to the recognition therein of public registers of the United Kingdom as authentic records as to the proof of the contents of such registers and other matters by means of duly authenticated certificates issued by public officers in the United Kingdom, it is desirable in the interests of reciprocity to make with respect to public registers of that country and certificates issued by public officers therein an order providing that in all parts of the United Kingdom certain documents including certificates may be received as evidence of the facts stated in such certificates, such an Order in Council may be made.

Cautions and Admissions

Those who suspect that the administration of a caution to a prisoner who may be about to make an admission of guilt not infrequently stops the flow of the truth will be interested in a case recently reported from a magistrates' court in the west of England. A man was arrested on a charge of stealing a bicycle and said it was his own property. The policeman noticed that apparently some changes had been made in the bicycle, and called attention to them. Thereupon, according to the evidence, the prisoner admitted he had stolen the cycle. When later he was cautioned, he denied the charge, and said he had made the admission because the constable wished him to do so. In answer to a question from the bench, the officer denied that undue pressure had been brought to bear on the prisoner in order to induce him to confess.

In the result the man was convicted and fined, so it may be assumed that the court was not satisfied with his story, or with the sequence of denial, admission and second denial after caution.

" Strange Oaths and Modern Instances "

The recent article by Dr. F. J. O. Coddington under the above heading, in which he mentions the difficulty arising in courts when an unusual form of oath, *e.g.*, breaking a saucer, which is said to be binding on a Chinaman, has to be taken, has prompted a correspondent to refer, with mixed admiration and envy, to the ease with which courts martial can surmount such difficulties under the provisions of s. 102 of the Army Act, 1955. This parallels the provisions of s. 2 of the Oaths Act, 1888, in that a person required to take an oath for the purpose of the Army Act may, if he objects to being sworn, and states as the ground of his objection either that he has no religious belief or that the taking of an oath is contrary to his religious belief, be permitted to make a solemn affirmation instead; but the section goes much further in that it allows a solemn affirmation in cases where " it is not reasonably practicable to administer an oath to such a person as aforesaid in the manner appropriate to his religious belief."

Our correspondent says that in his experience many magistrates' courts have the New Testament only; and possession of the Old Testament, the Douai Bible, and the Koran is limited to a few courts in large towns—where indeed there may well be most call for them—and even these courts are not likely to be able, without notice, to cope with some of the religious ceremonies required to solemnize a particular oath.

The difficulty which confronts a court when a witness expresses a desire to be sworn in a manner which the court cannot cater for is a real one, and it might well be that the dignity and efficiency of the courts would be enhanced if this provision of the Army Act could be incorporated in the general body of law.

Strikes

It is often said, when a strike is inflicting inconvenience and hardship upon a large number of people, including, perhaps, the strikers and their families, to say nothing of other trade unionists, that the vast majority of those on strike are secretly against it, but feel bound to come out rather than risk being regarded as disloyal to their fellows or their union. This may be true, for it is beyond doubt that many individual strikers will tell friends that they would rather not join in.

Obviously, a strike against the will of the majority of the men involved must indicate something wrong somewhere. If the delegates at a conference have called an unwanted strike, it looks as if the members have appointed the wrong delegates and officials to conduct their business for them, and the sooner a change is made the better will their affairs be managed. A remedy that is constantly advocated by people outside the trade unions who are tired of strikes and their evil consequences is that before a strike is decided upon there should be a vote of all the members of the union taken by secret ballot. Then at least the public would know what was the collective opinion of the members, and no member would have to fear that the way he voted might become known. This is a matter for the consideration of the responsible men in the trade union movement and we are unable to see any valid objection to its adoption. There would be no need for legislation if the unions themselves would take this step. It would not solve the whole problem of strikes, especially the question of irresponsible " unofficial " strikes, but it would

be a practical beginning. A strike in an essential service affecting the life of the whole community, if it is to take place at all, ought not to be undertaken without a clear indication that it is desired by the majority of those who will be directly involved.

Medical Evidence in Charges of Drunkenness

In disputed charges of drunkenness or of being under the influence of drink when in charge of a motor car it is often sought to prove that symptoms observed by the police and attributed to drink were in fact due to illness or other cause for which the defendant was not to blame. The prosecution may then try to prove its case by pointing to a combination of symptoms, some of which, but not all, could be explained away, leaving a strong probability that drink was the cause of the trouble, and negativing the possibility that the other causes alleged could account for everything.

A daily newspaper recently reported a case in which a man said to have been under the influence of drink when in charge of a car was stated to have had a pulse rate of 120 a minute. A medical witness said that this might have been due to nervousness at being examined. That accords with common experience, and many a man has been conscious of his heart beating fast when he has undergone a medical examination on which much depended. In this instance, the clerk is reported to have suggested that the defendant should allow his pulse to be taken there and then. This time it was 135, perhaps because he was even more nervous in court than he was at the police station, or possibly because for some reason relating to his state of health, he habitually had a rapid pulse. The newspaper report was very brief, and little detail was given, but at all events the defence succeeded and the defendant was discharged.

Open Prisons

It has been said that there is no such thing as a criminal type, but that there is a prison type. It is true that long or repeated confinement under unnatural conditions in prison tends to produce a definite and recognizable type. This is, happily, not so often seen today as it was a generation or two ago, largely because of a more enlightened policy in prison administration.

Prisoners live under unnatural conditions still, to a certain extent, but much is done to keep them in touch with the outside world and to prepare them to resume their place in it.

For many prisoners, what has come to be known as the open prison is achieving good results. At a recent meeting, Mr. R. Duncan Fairn, director of prison administration, said that astonishing results had been obtained. He referred to the reclamation of hundreds of acres of derelict land by 350 short-term prisoners in the Isle of Sheppey. The men there, he said, worked a good long day and, with the co-operation of local authorities, had a first-class educational programme. Prison authorities were trying to establish in prisoners the will to lead a good and useful life on discharge and to fit them for it. Open prisons exposed the men to the bracing influence of open-air conditions and gave them the opportunity to rediscover their own way back to positive community living.

Obviously, care must be taken in the selection of men for open prisons, even in the case of short sentences. The public not unnaturally becomes alarmed when escapes take place and fresh offences are committed by the escaped prisoners. However, we believe the number of such escapes is relatively small. If men can be put to hard work in healthy conditions and can see the fruits of their labours the effect upon them must be wholesome and encouraging. Making prison conditions harsh for no purpose other than that of adding punishment to loss of liberty has not in the past justified such a policy. The deterrent element of imprisonment does not disappear when conditions are humane and work is not uncongenial. Loss of liberty and all that it entails will always prove the most deterrent element in imprisonment. Maximum security is necessary for many prisoners, but for many others the open prison holds out the best prospects for the rehabilitation of the prisoner and serves the best interests of the public.

Shops Legislation

A great many people want new legislation on the subject of shops. Some traders would like all restrictions on hours of closing and Sunday opening abolished. There are in most cases traders who run their businesses alone or with the help of wife or family, and who argue that if they like to work long hours, seven days a week, that is their own affair. This is over-simplification of a thorny question, and ignores the effect on other traders who cannot impose such conditions on their assistants, and who might suffer from what they would regard as unfair competition.

Sunday closing is not only a question of conditions of employment, it is also a matter of the religious susceptibilities of a great many people who would deplore wholesale opening of shops as one step towards abolishing the observance of Sunday as a day apart.

The customer, the general public, seems to have no very definite view on Sunday closing and early closing, except when he is personally put to inconvenience. One hears fewer complaints on these points than on the lunch-hour closing, which is not compulsory but is widely observed. This prevents many workers from doing a little shopping in their own lunch-time and puts some in a real difficulty. Surely, they say, assistants need not all go to lunch at the same time, and then we other people could do our shopping at the time most convenient to ourselves.

It would be difficult to produce legislation that would please everybody, or would remove all anomalies and problems as to what is a shop, what constitutes the service of customers, and so on. There are other matters besides, that inspectors of weights and measures would like to see dealt with, as their reports often show. Many of these are hardly controversial, being obviously in the interests of the customer, and not likely to be opposed by traders. In the current number of *The Inspector* there is a reference to this matter of legislation. *The Inspector*, which is the Journal of the Institute of Shops Acts Administration, says: "A statement published recently by the executive council of the Union of Shop, Distributive and Allied Workers recorded deep disappointment and regret that the legislative programme outlined in the Queen's Speech at the opening of Parliament contained no reference to new legislation which has long been promised to deal with shop closing hours and health, welfare and safety in shops, offices and other non-industrial employment.

"Two successive governments have now, to our certain knowledge, as evidenced by the remarks of eminent persons who have attended our annual conference, paid lip service to the need for new legislation, but, apart from the 'Suggested Provisions for Amending Shops Legislation' issued by the Home Office, it has remained for a private member's Bill to be the first effective step in the right direction. This Bill, the Non-Industrial Employment Bill, received its second reading in the House of Commons on April 1, but, in view of the subsequent general election, the probability of the Bill becoming law under this or the succeeding government to be elected, is open to conjecture."

CONSENT TO ASSAULT

By C. B. ORR, *Barrister-at-Law*

At Chelmsford, on April 27, 1955, a man appeared before the deputy chairman of the Essex quarter sessions to answer to an indictment containing counts of attempted buggery and indecent assault on his wife. A plea of guilty of attempted buggery and not guilty of indecent assault was accepted by the prosecution, with the approval of the court, on the grounds that difficult questions of law were involved in the question of indecent assault by a husband on a wife.

The view that any attempted buggery on a woman does not include an indecent assault upon her is somewhat surprising, and in this case must be based on a contention that marriage prevents such an act from being an assault by reason of consent. Such a contention invites some inquiry into consent in general and that implied from marriage.

Consent was defined by the Deputy Assistant Judge at Middlesex quarter sessions in the case of *R.* v. *Lock* (1872) L.R.; 2 C.C.R. 10; 42 L.J. 5, as: " an active will in the mind of the patient to permit the doing of the act complained of, and knowledge of what is to be done, or of the nature of the act that is being done, is essential to the consent to the act." It is submitted that this definition is correct although the Judges who dealt with the Case Stated did not approve *in toto* of what the Judge below had said. The Judges did, however, approve in substance and held that mere submission does not amount to consent.

In *R.* v. *Case* (1850) 1 Den. 580; 14 J.P. 339, where a medical man had connexion with a girl of 14 on pretence of medical treatment, it was contended that the girl by not resisting had shown that she consented to the act. Wilde, C.J., pointed out that this was wrong, instancing the case of children not resisting a dentist while by no means consenting to his treatment of them. Platt, B., pointed out that if the girl could be said to have consented to the mechanical act of connexion she never consented to the pollution of her body.

In *R.* v. *Day* (1841) 9 C. & P. 722, Coleridge, J., expressed the opinion that although the fact that an adult quietly submitted to an outrage would go far to show consent, in the case of a child the jury should consider whether the submission was voluntary or the result of the circumstances in which the child was placed, there being a great difference between consent and submission.

Again, in *R.* v. *Woodhurst* (1870) 12 Cox 443, it was held that although consent would be a defence to a charge of assault, consent extorted by terror or induced by the influence of a person in whose power a girl feels herself to be is not really consent. In *R.* v. *Woolaston* (1872) 12 Cox 180, Kelly, C.B., said: " If anything is done by one person upon the person of another, to make the act an assault, it must be done without the consent and against the will of the person upon whom it is done. Mere submission is not consent, for there may be submission without consent, and while the feelings are repugnant to the act being done. Mere submission is totally different from consent."

Consent is a defence to a charge of common assault, *R.* v. *Guthrie* (1870) 34 J.P. 501; *R.* v. *Woolaston*, *supra*, unless it is likely or intended to do corporal hurt, in which case it is a breach of the peace and unlawful, *R.* v. *Coney* (1882) 8 Q.B.D. 534; 46 J.P. 404, where Stephen, J., at p. 549, said: " When one person is indicted for inflicting personal injury upon another, the consent of the person who sustains the injury is no defence to the person who inflicts the injury, if the injury is of such a nature, or is inflicted under such circumstances, that its infliction is injurious to the public as well as to the person injured. But the injuries given and received in prize-fights are injurious to the public, both because it is against the public interest that the lives and health of the combatants should be endangered by blows, and because prize-fights are disorderly exhibitions, mischievous on many obvious grounds. Therefore the consent of the parties to the blows which they mutually receive does not prevent those blows from being assaults."

An act unlawful in itself as being criminal cannot be rendered lawful by the consent of the person upon whom it is done, *R.* v. *Donovan* [1934] 2 K.B. 498; 98 J.P. 409, where Swift, J., at p. 507, said: " If an act is unlawful in the sense of being in itself a criminal act, it is plain that it cannot be rendered lawful because the person to whose detriment it is done consents to it. No person can licence another to commit a crime. So far as the criminal law is concerned, therefore, where the act charged is in itself unlawful, it can never be necessary to prove the absence of consent on the part of the person wronged in order to obtain the conviction of the wrongdoer. There are, however, many acts in themselves harmless and lawful which become unlawful only if they are done without the consent of the person affected. What is, in one case, an innocent act of familiarity or affection, may, in another, be an assault, for no other reason than that, in the one case there is consent, and in the other the consent is absent . . . In the present case it was not in dispute that the motive of the appellant was to gratify his own perverted desires. If, in the course of so doing, he acted so as to cause bodily harm, he cannot plead his corrupt motive as an excuse, and it may truly be said of him in Sir Michael Foster's words that 'he certainly beat him with an intention of doing some bodily harm, he had no other intent,' and that what he did was *malum in se*. Nothing could be more absurd or more repellant to the ordinary intelligence than to regard his conduct as comparable with that of a participant in one of those 'manly diversions' of which Sir Michael Foster wrote. Nor is his act to be compared with the rough but innocent horse-play in *R.* v. *Bruce* (2 Cox 262)."

If an assault be accompanied by circumstances of indecency consent may still be a defence, *R.* v. *Beale* (1865) 35 L.J.M.C. 60; L.R. 1 C.C.R. 10, unless the person upon whom the assault is made is under the age of 16, Criminal Law Amendment Act, 1922, s. 1, or is a mental defective, Mental Deficiency Act, 1913, s. 56 (3), or the assault is such that *R.* v. *Coney*, *supra*, and *R.* v. *Donovan*, *supra*, apply.

An act towards a woman which is admittedly done with the intention of committing rape or buggery must be indecent. The intent to commit rape or buggery, it is submitted, is injurious both to the public and the woman concerned and is unlawful in itself so as to make the consent of the woman concerned immaterial in the case of buggery.

The question then arises whether the fact that the victim is the wife of the person committing the assault affects the question of consent. The change in the status of a wife is summarized in the words of McCardie, J., in *Butterworth* v. *Butterworth* [1920] P. 126; 89 J.P. 151, *see* p. 132 of the former report: " It (action for criminal conversation) began at a time when the wife was in substance regarded by the common law as the property of her husband. The benefits of her fortune went to him at common law upon marriage. His power of personal

control was great. Even her earnings could be seized by him. She was viewed as a child, and was therefore subject to physical punishment at his hands provided it was moderate in extent: *see Blackstone's Commentaries* (1787) 10th edn., vol. 1, p. 444. The statutory relaxation of his power over her fortune and earnings are quite modern: *see* the Married Women's Property Acts, 1870 and 1882. The diminution of his power of physical control or punishment was gradual, the decision of the court in *R.* v. *Jackson* (1891) 1 Q.B. 671; 55 J.P. 246, marked the disappearance of the old and harsh view of a husband's rights over the body of woman he had taken to wife." The emancipation of the wife has by no means stood still since McCardie, J., delivered his judgment in 1920.

A woman at marriage consents to her husband exercising the marital right, but this cannot be said to extend to buggery. The consent to intercourse would cover acts which would amount to indecent assault if done towards any other woman, but although the intent of some acts may be equivocable, by no stretch of the imagination can acts admittedly done with intent to bugger be considered innocent love play. Although undoubtedly acts of familiarity, such acts cannot be said to be signs of affection in the normal and healthy meaning of the word. They cannot be acts preliminary to or part of marital intercourse covered by consent given at marriage.

A wife's consent to marital intercourse is not all embracing and a husband is not entitled to use force or violence to exercise his right, *R.* v. *Miller* [1954] 2 All E.R. 529; 118 J.P. 340, and although the husband would not be guilty of rape if he did so use force, he must not force himself on his wife, if he cannot persuade her, any more than he may confine her to prevent her leaving his house.

It is further submitted that mere delay by a wife in putting the law in motion against her husband who has attempted indecencies against her, although possibly amounting to submission, does not amount to consent. There are many reasons why a wife may for years put up with conduct on the part of her husband without consenting to it.

THE "J.P." AS ORACLE

By THE REV. W. J. BOLT, B.A., LL.M.

There is nothing derisive about this title. When the "J.P." made its first appearance, there was no organized law teaching outside the Inns of Court and the two Universities, and the intellectual hunger of young men "articled to the law" was an urgent need of which the first editor quickly showed his awareness.

The early column "To Correspondents" suggests that in the first years, the office was snowed under with letters of inquiry. There are a few indications that the staff attempted to deal with some queries by mail, but very early, "Practical Points" crystallized out as a separate feature, and has been active ever since.

The "J.P." filled a serious gap in legal education. If the many occurrences of the *nom-de-plume* "Articled Clerk" were authentic, there were legions of these young men apprenticed to attorneys who, however successful they were in their practice, failed to supply any very satisfactory tuition for their charges. We should know much more of the last generation of attorneys if some researcher would collect the variety of information their minions were seeking from the "J.P."

Many little mysteries surround the earliest questions. What class of people were they who could afford subscriptions to the journal, or else had access to it, and yet did not possess an almanac? Yet, on several occasions, readers were writing in to inquire the times of sunrise and sunset on particular dates (1840 at p. 693).

We must remember the background. Transport was meagre, and an articled clerk in a remote country town might not meet another of his kind once in 12 months. That type leaps at the golden opportunity this new periodical gives him. It slakes his thirst for knowledge, and answers the posers for which he can find no satisfying solution in the office.

History repeats itself, and "Practical Points" often raises that difficulty which emerges in the mediaeval law treatises, of distinguishing the "live" case from the hypothetical problem. As in *Brevia Placitata*, the two categories are sometimes very distinct, but sometimes they shade into one another. The problems we find in the columns of 1955 are, if not certainly authentic, at least plausible. But many queries of the first 50 years have a delicious air of fantasy about them.

The feature is rich in entertainment value; but, far more important than that, it gives us an insight into the mental processes of bygone generations of magistrates, practitioners and fledgelings.

A fat digest of *Questions and Answers*, covering the years 1877-1896, was published in 1902, and was apparently such a commercial success that a sequel, covering the years 1897-1909, appeared in 1911.* Each contained thousands of Practical Points classified and indexed, and constituted a serviceable cyclopedia of current law. In 1884 at p. 418, the "J.P." mentions that 1,650 queries had reached the office in the previous year.

The contents of the two Digests are solemn and concise; they embody much law that is now obsolete, and omit the items which, I think, would be of more interest to readers in 1955. My design is to hop across the decades and pluck odd blooms here and there.

About 1850, the whole diction of the queries changes. I suspect that the editor, realizing that unnecessary verbiage was a weed spoiling his valuable space, began to condense the wording of each query before he published it.

Here is a typical piece from the early years, in 1838 at p. 346.

"Sirs, Have the goodness to give your opinion on the following questions: A receives tithes issuing out of lands occupied by B, and B pays a composition in lieu of the tithes. Who is the person to be rated? Again, C is the owner of tithes issuing out of lands occupied by D, and D pays a rent to C, which includes the tithes also, or in other words, tithe-free; who is the person to be rated? I am, Gentlemen, Yours obediently, H.D., a Subscriber."

Magistrates often wrote up for suggestions for their study-shelves. A typical reply is given in 1840 at p. 661. "In reply to the letter of C.D.M.P., we beg to state that it seems to us a magistrate should have in his law library the last edition of *Burns' Justice*, *Archbold's Justice of the Peace*, *Stone's* valuable little treatise as to the *Form and Mode of Proceeding under the Summary Jurisdiction*, and properly the Statutes at large. The

* Subsequent volumes have been published, the last covering the years 1938–1949. – *Ed., J.P. and L.G.R.*

latter however are very expensive. This journal is more intended to convey to and inform parties interested, of the immediate and current legal transactions of the day, before they can be possibly embodied in treatises or other works. We should add however that the duties of a magistrate are so varied and numerous that it is hardly safe for one recently appointed to venture upon the execution of them without the aid of some experienced persons." In 1840 at p. 771, a similar query elicits a more extended list, and in 1841 at p. 779, there is an inquiry for a " pocket law library."

Here is an archaic query from 1842 at p. 110, by which time headnotes are being attached. " Constables: Handcuffs, providing same, cost of: Having had several complaints made to me as a magistrate of the county of A, residing in the parish of B, that there were no handbolts or irons for the use of the constable of that parish, I thereupon directed such articles to be obtained for the use of the parish of B, and I therefore beg to solicit your opinion as to out of what fund and by whom the costs of such articles should be defrayed. A Magistrate of the county of A."

The very lengthy reply begins: " It seems to us that a parish is bound by law to provide a constable with the necessary implements for securing felons and breakers of the peace. It appears that unless there is a custom to the contrary, the inhabitants are compellable to find stocks and are indictable if they omit (*Steverton* v. *Scroggs*, Cro. Eliz. 698), etc."

In 1843 at p. 107, when invited to suggest a suitable periodical for an articled clerk, the column, after naming a few, says, " Law periodicals can be of no value to a student of law. The information which they give, necessarily cursory and hasty as it is, must in the course of a short time appear in a more elaborate form, in works of a less evanescent character."

On the same page appears an indication, common in the early volumes, that the " J.P." could not cope with all the requirements of its readers. " We are much concerned that our correspondent should have had to apply so frequently, but the difficulties that have beset us during the latter part of last, and during this year, in the occupation of other matters, have been beyond our control, and we have been afraid to make promises which we are never certain of being able to fulfil. These difficulties will be obviated next year."

For a sample of the problems in substantive law which were submitted at this period, look at p. 703 of 1843. " J.W. cannot of course recover the sum of £20 lent by him, an acknowledgment of the receipt of which was neither given, and at the lending of which no witness was present. Cannot he obtain an acknowledgment? He might perhaps take the person unawares, and, in the presence of another person, ask him suddenly for payment of the loan. He would perhaps betray himself. Has not the debtor mentioned the loan to anyone? "

How beautifully the Victorian way of life is evoked by the gem in 1846 at p. 756: " Highways, Toll. A, an invalid, takes an airing in her carriage, sometimes one way, sometimes another, but generally upon the turnpike road, and goes occasionally to the turnpike house and turns round. The gate keeper demands the toll. Is A liable, and if so, suppose A did not go so far as the gate. F." The answer is easy. " If A passes above one hundred yards of the turnpike gate, he is liable, but not otherwise. See 3 Geo. 4, c. 126, s. 32, last words."

In 1848 at p. 72, we find this poser. " Larceny: On the 20th October last, A hired an ass from B (a woman), for 4 hours for 1*s.*, and on the 30th of the same month, a police officer falls into conversation with A 40 miles from the place where A hired such ass; and A there admitted that he hired an ass of a woman at a certain time and place (both of which were correct), that he got such ass for the purpose of going away as he could not get a living there, and that he afterwards sold such ass. The ass cannot be found. From the above circumstances, will you favour me with your opinion whether there is sufficient evidence to support a charge of felony without tracing the ass; and, if the ass cannot be found, what other evidence is necessary? A Subscriber."

The grievance of an honoured profession is ventilated at 1848 at p. 730. " Medical Officers, Fees: A row or riot takes place sometimes between a man and his wife, sometimes between a greater number of persons, either in a private house or in the streets. The wife or some other of the party receive violent and dangerous injuries, or a man is run over by a cart and is seriously injured. The police are called in and take the party injured to the police office, their own home, or to a lodging, the party being sensible and in some cases insensible. The police call in the first surgeon they can lay hands on (the medical officer of the union in some cases). The party injured, though not at the time a chargeable pauper, is wholly unable to pay the medical officer's fees, or being able, refuses to pay them on his recovery. Is the medical officer compellable to give his services in any and each of such cases as the above? Or, if not, if he does give his services gratis, can he recover his fees, and from whom, and under what authority? From whom can a medical officer (not a union surgeon), recover his fees in such cases as the above? From whom and under what authority can the police obtain repayment of any expenses for medical assistance or otherwise which they may incur in any of the above cases? A Subscriber."

The " J.P." disentangled it. " We have always considered that cases of this description bear very hard upon medical practitioners. They are placed in the unpleasant dilemma of undergoing a clamour for inhumanity if they refuse to attend the injured party, or else risking their time, labour and skill for no compensation. Nevertheless a medical practitioner must make up his mind to take one or other of the horns of the dilemma. He is by no means obliged to interfere by the exercise of his skill, whatever may be the danger of the party; but if he do so without any contract made before hand, at the time, or after, to pay his charges, he cannot recover. He is not obliged to answer the call of the police, or, if he do, to practice; but if he do practice, he must have an acknowledgment from that body to pay, from the police, in order to charge that body. This is assuming that the party injured cannot pay; but if he can pay he is certainly liable because, if in his senses at the time, his allowing of the medical practitioner to attend to him is an implied acknowledgment and will raise assumpsit. The police have no fund out of which they can pay the medical attendant; he must look to the party either expressly or impliedly engaging him and undertaking to pay."

The temper of the populace in the " hungry forties " is reflected in my last two excerpts from the period.

At 1847, p. 413: " Riot Acts: In the borough in which I reside, there have been a tumult and disorder occasioned by the high price of provisions. Certain farmers supposed to have speculated in wheat and other corn, bakers and others, have in consequence had their windows broken. The injured parties are by no means backward in claiming full compensation for the damage sustained, to be paid out of the borough fund. The mob assembled, consisted for the most part of boys, girls, noisy women, and a small portion of idle worthless male adults. Claims have been made for the trifling amount of 1*s.* 6*d.* to £2, or £3. Now it does not appear that there was any intention totally to demolish or destroy the buildings the windows of which they smashed. A doubt has therefore arisen whether

any amount can be taken from the borough fund to repair the injuries sustained; and as the costs of such trifling amounts, if demandable, will be heavy, we should be thankful to have your opinion, first, as to whether compensation can be legally claimed at all? And if so, what you consider would be reasonable costs on claims, if allowed, of very trifling amounts, say a few shillings? My own view is that compensation cannot be given by the magistrates without a felonious act or intent. The mere smashing of glass is not a felony at any rate, before the Riot Act is read. The borough above mentioned has a non-intromittent clause in its charter, and is not contributory to the county rate. A Ratepayer."

The last query must surely come from Thomas Hardy's Wessex. At p. 621 of 1847: "Breach of the Peace: For some time past in the county of A, on the occasion of a man beating his wife, or misconducting himself with other women, a number of persons have been in the habit of assembling opposite the house of the offender, and making a great noise and uproar with horns, kettles, etc., etc., well known as 'rough music.' No particular threats are heard, but there is great hooting of the owner, and stones are thrown against the house and among the crowd, rendering it dangerous to passengers in the street. The inhabitants although greatly disturbed and annoyed are not perhaps much alarmed by the tumult except in respect of the missiles thrown, the object of the parties being well known to be the special annoyance of the offender referred to. But the magistrates being determined, if possible, to put down the offence will be obliged by your opinion whether, on a repetition of such disturbances, the police would be justified in taking any of the parties into custody, and, if so, in what way they are to be dealt with. Can they be treated as rioters and committed for trial? If so, who should be bound to prosecute, and would the expenses of such prosecution be borne by the county? Or can the magistrates, instead of committing for trial, require the persons brought before them to find sureties to keep the peace, or for good behaviour, or is there any summary way of proceeding against them? Should you consider an indictment for riot sustainable, must not three persons at least be committed on that charge? A Subscriber."

I like to think of the editor, working through his weekly pile of letters from such inquirers, and commenting, in the memorable phrase of one of them, "Such ass . . . such ass . . . such ass!"

(To be continued.)

MEAT

The wordy charges and counter charges about food prices during the recent election were not without interest to local authorities as collective organizations and to their constituent members and officers. Many of these persons in fact are well accustomed to receiving constant and up-to-date news of this matter from domestic sources, and so were able to follow the debates with knowledge acquired not altogether painlessly.

As public bodies the local authorities are, however, concerned with a feature of food purchasing which although of national interest is definitely one for action and remedy locally. We refer to the kind of report appearing in the newspapers from time to time containing items such as the following:

> "A butcher's shop manager, Mr. X, was fined £5 at Blanktown yesterday for trying to obtain a total of £1 13*s.* 2*d.* by false pretences. He delivered Argentine lamb to the welfare hostel at A and to the school canteen at B with invoices for Empire lamb—the dearer meat. Mr. Y, inspector to the local authority, said that on May 14 he went to the A welfare hostel and was shown a shoulder of lamb marked Argentine. The invoice stated it to be Empire lamb, which meant Australia or New Zealand. Apart from the markings, which were clear, it was easy, said the inspector, for anyone in the meat trade to distinguish between Empire and Argentine lamb."

This kind of thing is not an isolated instance and viewed in the light of total expenditure on food is a serious matter. In the case of school meals alone the latest figures given in Education Statistics for the year 1953-54 published jointly by the Institute of Municipal Treasurers and Accountants and the Society of County Treasurers show that the provision of milk and meals (including staffing and overheads, etc.) cost nearly £24 million, of which, say, £10 million represented the actual cost of food purchased. A large sum and one that has risen since the period covered by the return; and to this must of course be added the purchases on account of other committees.

Prior to July of last year the purchase and sale of meat was under the control of the Minister of Food. There was published a list of joints with the appropriate fixed prices and it was an offence to misdescribe these joints or to charge a wrong price for a particular joint. Ministry meat inspectors made continuous test checks, frequently acting in collaboration with the internal audit staff of the local authority treasurers and the results were good. Now, however, the position is quite different. The fixed prices, the inspectors and indeed the Ministry have all disappeared, so that it has been necessary for new arrangements for tendering and supply to be made locally on the best terms possible.

Some authorities attempted in the beginning to make a schedule based on the Ministry lists and invited fixed prices from tenderers for particular joints of first quality meat for a defined period. The practical difficulties were, however, great: during the period of control the number of grades were limited to two for beef, mutton and lamb and one for pork but these numbers are now much increased—there are 13 for mutton, eight for beef, five for lamb and three for pork, with corresponding price variations. The increased number of grades also makes more difficult the identification of the grade, considerable experience being necessary, and the implications regarding supplies are obvious.

Another system that has been tried is supply at retail prices less an agreed discount. In certain areas where central kitchens predominate (and thus there are relatively few delivery points) the school meals officer is able to keep a close and watchful eye on deliveries and the system works reasonably well. In county areas which include a number of self-contained school canteens the method has disadvantages, not least of which is the fact that retail prices for particular joints are often claimed by one shop to be much higher than in another shop selling similar meat. There is also the difficulty of checking that meat of the quality and cut ordered and paid for is actually supplied.

Alternative methods of purchase have therefore been considered by various types of public bodies. Writing in the *Hospital and Social Service Journal*, Mr. S. Hodkinson, D.P.A., F.H.A., says "It does not require much consideration to establish that the surest way of ensuring consistent quality and value is by the employment of an experienced butcher and the purchase of meat in carcase. Wherever the geographical position and the

size of the hospital warrants it, this method should never be rejected without the most cogent reasons. Carcase prices for similar qualities are remarkably constant on any given day at a given market. Identification of the type of carcase and assessment of its quality is much simpler, disputes between buyer and seller seldom arise and are usually easily settled, especially if good quality meat is being bought. If meat is bought in this way, weekly quotations of prices from meat wholesalers are obtainable and, in some areas, inspection of the carcases before purchase is possible. With reputable dealers, descriptions can be relied upon and, in any case, as has been said, disputes are easily settled—the carcase " speaks for itself."

Hospitals, however, are different propositions entirely from school canteens and careful and detailed examination will be necessary, particularly in a scattered county area, before a decision is made. Transport is the problem in such a district but it is not insuperable and is not necessarily too expensive to make total costs uneconomic. It may be worth while if anything is to be done to start in the first place with a scheme covering only part of the county. Certain county boroughs have already made a decision: in Sheffield a municipal butchery has actually operated for over 10 years in connexion with the school meals service and Coventry city council have decided fairly recently to establish a similar undertaking and, incidentally, also a vegetable store.

The saving in cost to public funds at a conservative estimate may be put at 3*d.* to 4*d.* a pound.

Finally there is expert inspection of deliveries, which in some instances may be preferred to the buying of carcases. When doubt arises and it is necessary to question or challenge a supplier about the grade or quality of meat the ordinary member of a local authority staff is at a substantial disadvantage and our information is that the employment of an expert, even on a part-time basis, is well worth while. This method may be particularly suited to scattered areas, particularly in the more rural counties, and we are interested to learn that such a scheme of inspection is being examined by the county education authorities of Cumberland, Northumberland, and Westmorland. The officials of the three counties have agreed that an appointment is necessary, the officer to be responsible for meat inspection and for training the canteen and kitchen staffs in meat identification. Having regard to the duties and responsibilities of the post a salary of £800/£25/£950 is suggested, with travelling and subsistence allowances which are estimated at £350 *per annum*. Costs would be shared on the basis of the number of school meals supplied.

WEEKLY NOTES OF CASES

CHANCERY DIVISION

(Before Wynn-Parry, J.)

May 12, 18, 1955

RE NOTTINGHAM GENERAL CEMETERY CO.

Cemetery—Company—Winding-up—Freehold land constituting cemetery—Implied contracts with holders of grave certificates—Contracts for upkeep of graves—Disclaimer of onerous property by liquidator—Companies Act, 1948 (11 *and* 12 *Geo.* 6, *c.* 38), *s.* 323 (1).

Summons in company winding-up.

The liquidator of a cemetery company applied for leave to disclaim onerous property under s. 323 of the Companies Act, 1948.

The company was incorporated on May 19, 1836, by special Act for the purpose of establishing and maintaining a cemetery in Nottingham. The company was empowered to grant, and had granted, grave certificates for the exclusive right of burial in vaults and other burial places in the cemetery. The undertaking was successfully carried on for many years, but the Nottingham Corporation Act, 1923, imposed certain restrictions on burials in the cemetery which resulted in the company sustaining losses, and on May 11, 1953, an order was made for the compulsory winding-up of the company as an unregistered company under s. 399 of the Act of 1948. The funds in the hands of the liquidator were only sufficient to maintain the cemetery for two and a half years and it was thus clear that the undertaking must terminate in a short time. Pursuant to s. 323 of the Act the liquidator applied for liberty to disclaim the freehold land which constituted the cemetery, all implied contracts with the holders of grave certificates, and all contracts for the upkeep of graves.

Held, the freehold land which constituted the cemetery was land burdened with onerous covenants within s. 323 of the Act, and an order giving the liquidator liberty to disclaim would in the circumstances be made.

Counsel: *Raymond Walton* for the liquidator; *Parbury* for shareholders of the company; *C. N. Shawcross, Q.C.*, and *J. L. Elson Rees*, for Nottingham corporation; *D. B. Buckley*, for the Imperial War Graves Commission; *W. F. Waite*, for the Commissioners of Crown Lands; *Christopher Slade* for holders of grave certificates.

Solicitors: *Slaughter & May*; *Lee, Ockerby, Johnson & Co.*; *Sharpe Pritchard & Co.*, for town clerk, Nottingham; *Legal Adviser to Imperial War Graves Commission*; *Solicitor to Commissioners of Crown Lands*; *Theodore Goddard & Co.*

(Reported by R. D. H. Osborne, Esq., Barrister-at-Law.)

MISCELLANEOUS INFORMATION

PORTSMOUTH JUVENILE COURT PANEL REPORT

Although there is no right of the general public to be admitted to the sittings of a juvenile court, there is so much interest in them that many courts are somewhat embarrassed by the number of applications for permission to attend that are made by people who have good reasons for making such applications. It is felt that it is undesirable for children to be dealt with in a court room crowded by onlookers but at the same time there is a desire to give opportunities to those who wish to visit the juvenile courts for the purpose of study and experience. The only way to deal satisfactorily with the matter is to make a rule limiting the number of visitors allowed at one time. The report of the city of Portsmouth juvenile court panel for 1954 shows the variety of applicants for permission to attend. " Throughout the year there was a steady flow to the court of visitors interested in the treatment of juvenile delinquency. Among them were justices from other courts, the deputy town clerk of Duisberg, a German youth leader, two German probation officers, a B.B.C. script writer, a police inspector from Thailand, several student teachers, social science students, health visitor students, and district nurses."

There was a slight decrease in the total number of offenders as compared with 1953. There was a definite improvement with regard to indictable offences during the first nine months of 1954 but the figures increased considerably during the last three months. Care or protection cases fell during the year by 31·4 *per cent*. Non-indictable offences rose sharply, but this was due almost entirely to road traffic offences. Failure to comply with requirements of probation orders amounted only to two compared with 12 in the previous year. In practically every case involving loss or damage to property the probationer was ordered to pay the amount for which he was responsible, or, if limited by statute, such amount as it was possible to order. In Portsmouth, as in many other cases, the number of approved school orders decreased, the figure being 16 in 1954 against 32 in 1953.

What the report calls the " grievous national problem created by the lack of accommodation for mental defectives " is exemplified by a distressing case of a nine year old epileptic boy who was brought before the juvenile court as in need of care or protection and spent over two months in a remand home where he had been violent and

attacked other boys. In other similar cases, where institutional treatment was the only remedy, it was found that the child or young person had been for a considerable time under the supervision of the local health authority, who have little hope of obtaining vacancies because of the acute shortage of hospital accommodation.

On the basis that the causes of juvenile crime are either in the child himself, or his environment, or both, the probation officers have investigated 100 cases taken at random from their files and certain results obtained are given in this report.

CITY OF LINCOLN—CHIEF CONSTABLE'S REPORT FOR 1954

Lincoln is one of the more fortunate places. The force is not a large one, having an authorized establishment of 116. At the end of 1954 there were only six vacancies, this in spite of the fact that only 11 were recruited during the year and the wastage was 14.

The civil defence training received by all regular members of the force gives them a full basic training course in civil defence, elementary reconnaissance and reporting of air raid damage and initial damage control, and basic rescue. The special constabulary also had training lectures in civil defence.

The report records that during the year 16 arrests were effected by wireless-car crews, and seven others were made by the C.I.D. as a result of the close liaison maintained between Lincoln's information room and that of the Lincolnshire constabulary.

Accident prevention is dealt with at some length, an indication of the importance attached by the police to this part of their duty. A good deal of effort was devoted to making children safety-minded, with lectures, training and competitions. Lectures were also given by police, on road safety, to recruits at an Army barracks, to members of a United States Air Force contingent and to cadets of the local St. John Ambulance Corps.

Lincoln suffers from those anachronisms, level crossings, which waste so much time and cause such serious congestion. The chief constable expresses the hope that a new scheme, the Pelham Bridge scheme, will soon receive approval as it will, in his view, undoubtedly prove to be a major factor in helping to solve the city's traffic problem by relieving High Street of much of its vehicular traffic.

Under the heading "Finance" are given figures showing that a 1*s.* 11*d.* rate was necessary to produce the £49,175 9*s.* 5*d.* of police expenditure which was borne by the rates. Included in the expenditure was £14,509 12*s.* 3*d.* for police pensions.

Crime detection shows a high figure of 75·1 *per cent.* (537 out of 715 crimes). Of these 715, 120 (16·7 *per cent.*) were known to have been committed by juveniles. It is interesting to speculate whether any sound conclusions can be drawn from a table of increases and decreases of certain types of offences, such as increases of 10 in indecent assaults on females, 20 in embezzlement, 32 in false pretences and 28 in frauds by agents, and decreases of 26 in indecency with males, 20 in larceny of pedal cycles and 31 in simple larceny.

From the police point of view Lincoln has a good housing record, 32 of a programme of 35 having been completed and occupied. At the end of 1954 one married member of the force was without a house.

Another odd police duty (odd, that is, in that it is yet one more addition to many others) is the reception of stray dogs. Lincoln police in 1954 dealt with 187. Seventy-two were later claimed by the owners and 17 certificates were issued (under the Dogs (Amendment) Act, 1928) to finders to enable them to retain the dogs. The balance, we presume, of these unfortunate animals found their way to a dogs' home or were destroyed. It is very heartless of people not to take better care of animals for which they are responsible, for it seems certain that many of the 187 could not have been properly looked after or they would not have been found straying.

With 173 licensed premises and 29 registered clubs Lincoln produced only 53 charges of drunkenness during the year, and this was an increase of eight on 1953. One of the 53 owed his condition to drinking surgical spirit, an addiction which it is very hard to understand.

NATIONAL COUNCIL OF SOCIAL SERVICE ANNUAL REPORT

It is explained in the recently issued annual report of the National Council of Social Service that it has always been regarded as a central task of the council to encourage initiative, to disseminate information, and to foster community organizations, and it is pointed out that although there is now a growing readiness for men and women to accept the social services provided by the State the maintenance of those services involves a sharing of social responsibility. A striking example is the extension of voluntary service in connexion with the hospitals. On the matter of group leadership it is shown that the country is particularly rich in the number of organizations which represent "communities of interest" or which provide opportunities for community services. Community councils have been established in 45 counties and it is hoped that it will not be long before they are adopted in the few remaining rural counties. In the urban field, councils of social service are mainly in the larger cities and not so much in the smaller towns. In some 1,500 neighbourhoods, community associations are either fully established or developing. They provide consultative and working bodies which can co-operate closely with the local government authorities.

The National Council provides central services for a number of associated groups each of which is an autonomous body. The forms are varied. The National Federation of Community Associations and the National Association of Women's Clubs have close-knit formal constitutions; the National Citizens' Advice Bureaux Committee consists of representatives of local committees as does also the National Old People's Welfare Committee; of a looser structure are the Standing Conference of Councils of Social Service and the Women's Group on Public Welfare.

The report includes a summary of the work done by the various associated groups and committees. Amongst the services mentioned are the citizens' advice bureaux which during the year dealt with some one and a quarter million inquiries. Nearly half a million of these had a bearing on family life and were about housing and matrimonial and other family problems. The rural department provides a central source of information and advice on legal and architectural matters and administers the village halls loan scheme. Since the report was prepared the Government has announced its intention, through the Minister of Education, to assist to a greater extent in the provision of more village halls on which the rural committee of the council has been pressing action for some time. The National Old People's Welfare Committee is responsible for the promotion of work for the welfare of old people both in urban and in rural communities. During the year the number of county and local committees increased to 56 and 1,141 respectively.

The report of the National Federation of Community Associations expresses concern at the difficulty in obtaining building licences for churches and community buildings and further, at the Government's requirement that the cost must be borne from voluntary funds. In spite, however, of restrictions, the number of centres for which associations have the sole use has increased in the United Kingdom by 46. It is noted that the most encouraging method of provision has been at Bristol where the local education authority gives every assistance to voluntary groups desirous of building their own premises, and, in turn, they have been helped by international building volunteers who at some stage have assisted in construction. A similar method, with modifications, is being adopted in some other parts of the country and at least one authority which is not a local education authority is helping an association in its area on these lines. The London County Council has erected buildings on some of its out-county estates, these being leased to the local education authority which then makes its own arrangements with the community association. The council has also built small rooms called tenants' rooms for a number of its estates, and this kind of provision is attracting attention elsewhere.

The Central Churches Group spent much time during the year on the study of co-operation between the churches and leaders of social work in the rural areas. In Cornwall an interesting experiment has been in operation for some time. Regular meetings are held in the county at which officers of statutory and voluntary social services are invited to explain to the clergy the operation of the welfare state. There has also been a somewhat similar development in Hampshire.

The importance of international relations in the field of social work is reflected in the activities of the Overseas and International Department. A continuing feature of this work is the advice and guidance given to foreign and overseas visitors. Altogether in its various spheres it is clear that the council continues to play a vital part in the social service structure of this country.

COUNTY BOROUGH OF NORTHAMPTON—CHIEF CONSTABLE'S REPORT FOR 1954

This is a very full report, covering in some detail the various aspects of police work in the borough. There is what one has come, unfortunately, to expect, a shortage of "manpower," but there is one unusual feature in this. The authorized establishment is 158, and the actual strength on December 31, 1954, was 139. The 19 vacancies included four policewomen vacancies out of an authorized establishment of eight. In spite of their small numbers, the women police performed a great variety of duties, details of which are given, and they even found time to give lectures to youth and women's organizations and to conduct parties round police headquarters.

The recruiting figures show the usual small percentage of candidates accepted—nine out of 67 applicants. The biggest number of rejections for one cause was 16, who were classed as "unsuitable."

In the part of the report dealing with crime, the chief constable comments on the comparatively small number of cases of false pretences in the borough, an annual average since 1942 of 30, and he

wonders whether the residents of Northampton have developed a wariness in accepting cheques from strangers, and are turning a deaf ear to plausible and disconsolate tales told by practitioners of this form of crime.

The number of " breaking " offences (57) was the lowest since 1943, and it is thought that this may be due in part to the arrest in 1952 of 10 juveniles who had committed some 35 offences out of 132 " breaking " offences in that year. During 1954, 56 juveniles were proceeded against for indictable offences, out of a total of 173, just less than one in three.

There are 348 licensed premises in the borough of Northampton, and 37 registered clubs. It is noted that of the 89 persons proceeded against during 1954 for drunkenness 32 were of Irish nationality, but we feel that no conclusion (favourable or unfavourable to the Irish) can be drawn from this unless one knows the percentage of Irish people in the population.

In dealing with traffic matters, the report states that 1954 was the first full year of motor cycle patrol work. Unfortunately the machines are not equipped with wireless and cannot be used, therefore, "for urgent matters or immediate action so far as headquarters are concerned." Police motor vehicles (cars and cycles) covered a total distance of 180,922 miles, using 11,228 gallons of petrol, an average of 16·1 miles per gallon. The horse power of the vehicles is not given, but this low figure indicates that motoring most of the time in congested city streets is an expensive hobby. Another interesting detail in this part of the report is that the chief causes of mechanical trouble to police vehicles were gear boxes and clutches.

The chief constable is able to report that " the situation regarding police housing has now improved very considerably." Twenty-seven police houses have been built since the war, and six other houses have been made available for police use. Four other houses should be ready for occupation early in 1955.

The report concludes on a personal note. The chief constable was appointed to his present office in 1923, and he entered then into a gentleman's agreement with the authorities that he would serve, if necessary, until he was 65 years of age, by which time he will have completed 45 years' police service. That time, he notes, is near at hand. During the 106 years of the force's existence, there have been only four chief officers of police in command of it, a wonderful record. But the borough seems to attract faithful servants, for it is recorded also that during that same period there have been only four recorders and three town clerks. We feel sure that all our readers will wish to congratulate the chief constable on his long service, during which there have been many developments in the sphere of police activities.

LAW AND PENALTIES IN MAGISTERIAL AND OTHER COURTS

No. 46.

DRIVING A CAR WHILE UNINSURED— A TECHNICAL OFFENCE

A motor engineer was the defendant in a curious case heard by the Blofield magistrates last month. The defendant was charged with driving a car while uninsured, contrary to s. 35 of the Road Traffic Act, 1930, and he pleaded not guilty.

For the prosecution, evidence was given by a police motor patrol that the defendant was towing another car. Witness asked that the car being towed, a stock car, should be started up and it was thereupon moved under its own power. The case for the prosecution was that because the defendant was towing another car which was not disabled, his insurance policy was thereby rendered void.

The defendant gave evidence that he was approached by the owner of the stock car, and asked if he would tow it to Yarmouth. He regarded the car as a wreck.

A steel erector was called for the defence, and said that he had given £14 for the car, after which it had stood in the open for 12 months. To conform with stock car racing rules, he had disconnected the normal petrol tank and carried fuel in an oil drum inside the car. He had accidently broken the petrol lead, there was no oil in the sump and it was only possible to move the car a yard or so under its own power with the petrol left in the carburettor.

The defendant's insurance policy covered him whilst towing a " disabled " vehicle, and the court had to decide upon the meaning of that word.

For the defence, it was submitted that if the vehicle was not able to be driven, cover was afforded by the policy. It was conceded by the defence that due to the presence of petrol in the carburettor, the engine could be started and run for a short time.

The bench retired and on returning to court the chairman said the bench had come to the conclusion that defendant had committed a technical offence for which he would be fined £2. " We find special reasons for not suspending your licence because you did not realize that the car was roadworthy in the strict sense of the word," he added.

COMMENT

It would seem that the chairman's description of the offence as a technical one was fully justified, and it is a little surprising that if the facts were as set out above the police felt it obligatory to prosecute.

The case affords, in the submission of the writer, a very good illustration of circumstances under which it is proper for the court to take advantage of the power given in subs. (2) of s. 35 to refrain from disqualifying a convicted person on account of the presence of a reason special to the facts which constitute the offence.

(The writer is greatly indebted to Mr. C. R. Kaile, solicitor, of Norwich, who conducted the defence, for information in regard to this case.) R.L.H.

No. 47.

ANOTHER PROSECUTION UNDER THE PROTECTION OF BIRDS ACT, 1954

Epsom justices heard six charges under the Protection of Birds Act, 1954, on May 16 last, when a smallholder appeared before them. The first charge alleged that he had used a trap for the purpose of taking wild birds without a licence granted under s. 10 contrary to s. 5 (1) (*b*) of the Act. The second and third charges were laid under s. 1 and averred that the defendant had in his possession a wild bird recently taken which was not shown to have been taken otherwise than in contravention of the Act or any order made thereunder. The last three charges laid under s. 8 (1) alleged that the defendant had confined a bird in a cage which was not sufficient in height, length and breadth to permit the bird to stretch its wings freely.

For the prosecution evidence was given by a police officer and an inspector of the R.S.P.C.A. that they saw on the defendant's land some 60 *yds.* from a bungalow that he was building, but visible from it, three small cages and six open and sprung bird traps. A fair amount of bird seed was scattered around the traps and in the small cages were respectively a bullfinch, a greenfinch and a twite presumably being used as decoys. A further trap was set about 20 *ft.* from the bungalow.

The bullfinch, which was close ringed, appeared to have been in captivity for some time, but evidence was given by an expert that both the twite and the greenfinch had recently been taken.

The defendant, who pleaded not guilty, agreed that the offences had taken place but denied any responsibility for them. He gave evidence that he had been working most of the morning at tiling inside the bungalow, that the birds, cages and traps were not his property and that he had no knowledge that they were there. He suggested that they had been placed there by some trespasser.

Judge Tudor Rees, sitting as chairman of the bench, said it was so far as they knew, the first prosecution under a most valuable new Act designed to protect " our companions and friends—the birds of song that relieve the tedium of our daily lives." Defendant who, said the judge, was guilty of a vile and foul offence and who had previous convictions under the Protection of Birds Act, 1933, was fined £20 upon the first charge and ordered to pay £10 10*s.* costs. He was fined £3 upon each of the second and third charges and £10 upon each of the fourth, fifth and sixth charges, and an order was made for the forfeiture of the birds, cages and traps.

COMMENT

It is not necessary to comment at great length upon this case for the writer dealt fully with some of the provisions of this new Act, which came into force on December 1 last, in art. 12 which appeared at p. 120, *ante*, and the provisions of s. 8 (1) in particular were reviewed in art. 32 which appeared at p. 287, *ante*.

The chairman was, of course, in error in thinking that the case heard by his bench was the first prosecution under the Act and Mr. Gordon Jones, who prosecuted both in this case and the case reported at p. 287, *ante*, was probably glad that the expert evidence called by the defence in the earlier case was not called again, for it will be recalled that in the earlier case the expert evidence led to the court dismissing all the charges brought under s. 8.

The wording of the charges laid under s. 1 is worthy of notice, for it will be seen that the onus of proof is laid by the section fairly and squarely on the shoulders of the defence once the prosecution satisfies the court that a defendant has in his possession or control a wild bird recently killed or taken.

Mr. Albert Bradley, clerk to the Epsom justices, to whom the writer is greatly indebted for this report, points out that in connexion with the first charge, as seven traps were used, the defendant was liable by virtue of the proviso to s. 12 (2) to a total penalty of £175.

The provisions of s. 12 as to penalties are stiff and, in some respects, unusual, and they repay careful study. It was under the powers conferred by subs. (3) of the section that the order for forfeiture of birds, cages and traps, referred to above, was made.

No. 48.

AN UNUSUAL TYPE OF MONEYLENDER

A 47 year old woman pleaded not guilty when she appeared at North Shields magistrates' court on May 12 last, to answer a charge that she had unlawfully carried on business as a moneylender without there being in force a proper moneylender's excise licence authorizing her so to do, contrary to s. 1 of the Moneylenders Act, 1927.

For the prosecution, it was said that defendant had been lending money for about two and a half years and had kept pension or family allowance books until the borrower had paid her back, but as far as was known she had never been to the Post Office and drawn money on the books. The procedure had been for the debtors to come to the defendant once a fortnight or once a month, take the books, draw the cash, hand some to her and then give her back the books. No fixed amount of interest had been paid but one borrower paid 3*s.* 6*d.* in the £, another 3*s.*, while two others paid nothing. The prosecutor stressed that the fact that defendant had left it to the kindness of the borrowers to give her something in interest did not alter the fact that she made a proper business of it and accepted payments for it.

A number of witnesses were called for the prosecution who bore out the statements set out above and defendant admitted that she had lent the money but said she had not done so as a moneylender. Defendant, employed as a cook, at £4 10*s.* a week, was fined £40 and ordered to pay £3 18*s.* costs.

COMMENT

It is not often that charges of this nature come before the courts, because normally moneylenders are very well informed indeed as to the statutory provisions which govern their business, and it would appear possible that in the case reported above the defendant genuinely did not regard herself as falling within the statutory definition of a moneylender.

The expression "moneylender" is defined in s. 6 of the Moneylenders Act, 1900, where it is provided that it shall include every person whose business is that of money lending, or who advertises or announces himself or holds himself out in any way as carrying on that business. It does not, however, include a pawnbroker in respect of the business carried on by him in accordance with the provisions of the Acts for the time being in force relating to pawnbrokers.

Section 1 (3) of the Act of 1927 provides that a moneylender who does not obtain an excise licence is liable to an excise penalty of £100 and on a second conviction may be imprisoned for three months. If the second offender is a company the excise penalty is £500.

(The writer is greatly indebted to Mr. E. L. F. Bitterman, O.B.E., clerk to the North Shields justices, for information in regard to this case.)

R.L.H.

BIRTHDAY HONOURS

PRIME MINISTER'S LIST

BARONS

McNair, Sir Arnold Duncan, Q.C., lately President and United Kingdom Judge, International Court of Justice at The Hague.

BARONETS

Williams, His Honour George Clark, Q.C., for public services in Carmarthenshire.

ORDER OF THE BRITISH EMPIRE
CIVIL DIVISION

C.B.E.

Slatford, C. A., custodian of Enemy Property for England and Wales, Board of Trade.

Wilson, J. T. P., ch. reg. in Bankruptcy, High Court of Justice.

FOREIGN OFFICE LIST
ORDER OF THE BRITISH EMPIRE

K.B.E.

Lindsay, William O'Brien, lately Chief Justice of the Sudan.

C.B.E.

Lomax, D., lately Senior Justice, High Court, Sudan.

COMMONWEALTH OF AUSTRALIA LIST
KNIGHTS BACHELOR

Clyne, Thomas Stuart, Judge of Bankruptcy Court.

ORDER OF THE BRITISH EMPIRE
CIVIL DIVISION

K.B.E.

Taylor, Alan Russell, Justice of the High Court.

NEW ZEALAND LIST
KNIGHTS BACHELOR

Tyndall, Mr. Justice Arthur, Judge of the Court of Arbitration.

CEYLON LIST
ORDER OF ST. MICHAEL AND ST. GEORGE

K.C.M.G.

Jayasundera, Sir Ukwatte Acharige, Q.C., for political and public services.

Rose, Sir Alan Edward Percival, Q.C., Chief Justice.

COLONIAL OFFICE LIST
KNIGHTS BACHELOR

Griffin, John Bowes, Q.C., Chief Justice, Uganda.

Mathieu-Perez, Joseph Leon, Q.C., Chief Justice, Trinidad and Tobago.

Robinson, George Gilmour, Chief Justice, Zanzibar.

BRITISH EMPIRE MEDAL
CIVIL DIVISION

Starrit, W. A., head constable, Royal Ulster Constabulary.

PRIME MINISTER'S LIST

O.B.E.

Bebbington, B. N., chief constable, Cambridge City Police Force.

Broad, F. J., town clerk, Barnstaple borough, North Devon.

Lofthouse, H. S., deputy chief constable, West Riding of Yorkshire Constabulary.

M.B.E.

Cullen, A. T., superintendent and deputy chief constable, Southampton Borough Police Force.

Gray, F. R., superintendent, Metropolitan Police Force (recently appointed assistant chief constable, Newcastle upon Tyne).

Livings, J., detective chief superintendent, Metropolitan Police Force.

Steptoe, J., clerk to Sturminster R.D.C.

THE QUEEN'S POLICE MEDAL FOR DISTINGUISHED SERVICE

ENGLAND AND WALES

Lawrence, S., chief constable, Kingston-upon-Hull City Police Force.

Goodchild, N. W., chief constable, Wolverhampton Borough Police Force.

Thomas, chief constable, Merthyr Tydfil Borough Police Force.

Ambler, H., assistant chief constable, Bradford City Police Force.

Wheeler, T. B., superintendent and deputy chief constable, Herefordshire Constabulary.

NORTHERN IRELAND

Whitcroft, W. R., head constable, Royal Ulster Constabulary.

CORRESPONDENCE

The Editor,
Justice of the Peace and
Local Government Review.

DEAR SIR,

STYLE OF MAYORS OF CITIES

I wonder if any of your readers could assist in explaining how the title of "Right Worshipful" comes to be used for the mayors (as apart from the lord mayors) of at least some cities and what entitlement there may be for the usage.

Some books of reference infer that the title is correctly used in the cases of all cities (as apart from boroughs not being cities) whilst other reference books seem to suggest that it is applicable only in certain cases.

I have myself made inquiry of a number of editors concerned but they have not been able to give any definite ruling. The occasion recently having arisen when an anniversary in this city might have given grounds for making application, I put in an inquiry to the Privy Council (in turn referred to the Home Office) as to whether a petition for the grant of the style might be considered.

A courteous reply from the Home Office was received in the following terms:

"There is no statutory or other authority for the use of a prefix in describing a mayor or lord mayor except in those cases where by royal authority the chief magistrate is described as Right Honourable —as in London and York. It follows that it has not been the practice to petition for the grant of the style 'the Right Worshipful' or 'Worshipful.' It is known that these descriptions are used as a matter of local custom and practice, and that the style Right Worshipful is sometimes locally used in addressing mayors of cities and lord mayors who are not entitled to the prefix Right Honourable; but it is not the practice of this department to use either of the descriptions or the expression His Worship when communicating with mayors or lord mayors."

It would be interesting to learn whether the practice is one commonly used in cities and if so how it has derived.

Yours faithfully,
C. PETER CLARKE,
Town Clerk.

Town Hall, Peterborough.

PERSONALIA

APPOINTMENTS

Mr. R. O. Barlow has been appointed to the post of assistant solicitor in the town clerk's department of Leeds city and county borough council. Previous to his new appointment, Mr. Barlow had been legal assistant and assistant solicitor with the Doncaster, Yorks., borough council from 1950.

Miss S. A. Himmel took up her duties as a probation officer in Middlesex on June 1, 1955. Miss Himmel was previously a probation officer at Ashton-under-Lyne, Lancashire.

RETIREMENTS

Mr. R. A. Lusty, deputy clerk of Battle, East Sussex, rural district council, retires on June 12, after serving 33 years in local government. Mr. Lusty was appointed clerk of the late Battle rural district council (which then consisted of only 12 parishes) and the Battle board of guardians in 1922. In 1930, when the guardians' functions were transferred to East Sussex county council, Mr. Lusty was appointed clerk of Battle rural district council and registrar of marriages. When the present council (consisting of 33 parishes) was formed under the East Sussex Review Order of 1934, Mr. Lusty was appointed deputy clerk, and was responsible for conducting the elections of councillors for the newly constituted council. He was acting clerk during the absence of the clerk on war service from 1940–1945.

Superintendent F. J. Harris is retiring from the Oxfordshire constabulary, after 30 years' service, the last 10 years being spent at Witney.

OBITUARY

The Hon. Robert Spelman Robertson, a former Chief Justice of Ontario, Canada, has died at the age of 84. His appointment to that post came in 1938, and he retired in 1952.

Judge Harold Montelle Stephens, Chief Justice of the United States Circuit Court of Appeals in Washington, has died at the age of 69. Judge Stephens was appointed to the Court of Appeals by President Roosevelt in 1935.

Major Samuel Wiggins, C.B.E., from 1921 until shortly before his death registrar of Stow-in-the-Wold and Northleach county courts, Glouc., has died.

Mr. Frederick William Gillespie, Leeds solicitor and former joint registrar of Leeds county court, has died.

Mr. Harold Thomas Nunn, assistant clerk to the Holt, Norfolk, justices, has died at the age of 56. Mr. Nunn had been managing clerk to Messrs. Butcher, Andrews and Savory, solicitors, of Holt, for the past 20 years. He was also clerk to Edgefield and Hempstead parish councils.

THE WEEK IN PARLIAMENT

From Our Lobby Correspondent

The programme of legislation for the new Session of Parliament which is to last for 15 months was foreshadowed in the traditional manner in the Queen's Speech at the State opening.

Among the measures to be introduced will be Bills designed to:

1. Extend legal aid to proceedings in county courts in England and Wales, and to increase the jurisdiction of those courts.
2. Amend the law relating to recorders and stipendiary magistrates, and set up new criminal courts at Liverpool and Manchester.
3. Amend the Road Traffic Acts.
4. Amend the scheme of superannuation for teachers.
5. Extend the period during which family allowances are payable for children who remain at school.
6. Amend the laws relating to valuation and rating.
7. Reform the law of copyright on the basis of the recommendations in the report of the Copyright Committee.
8. Enable the Government to carry out their obligations under the Commonwealth Sugar Agreement.
9. Safeguard the health, welfare and safety of those employed in agriculture and forestry; and
10. Reduce the pollution of the air by smoke and other causes.

In addition to these proposals, the Government are examining the problems of local government in England and Wales with a view to introducing legislation, in the light of proposals recently agreed among local authority associations.

An inquiry will be held to consider practice and procedure in relation to administrative tribunals and quasi-judicial inquiries, including those concerning land.

Further consideration will be given to the question of the composition of the House of Lords.

The Government will also "take such further action as may be required in the public interest to deal with abuses in the field of monopolies and restrictive practices."

PARLIAMENTARY INTELLIGENCE

Progress of Bills

HOUSE OF COMMONS

Friday, June 10

RATING AND VALUATION (MISCELLANEOUS PROVISIONS) BILL, read 1a.

ADDITIONS TO COMMISSIONS

HANTS COUNTY

The Rev. Lewis Rees Davies, 97, Leigh Road, Eastleigh.
Henry George Goodsell, 2, Ullswater, Eastleigh.
Mrs. Elsie Kathleen Mabel Laurie, 81, Hursley Road, Chandlers Ford, Eastleigh.
Frank Worsfold McClennaghan, Sladen Green, Binley, nr. Andover.
Mrs. Jean Elizabeth Minors, Danehurst, Locksheath, Fareham.
Arthur Phillips, Church Cottage, Compton, Winchester.
Major Thomas Douglas Pilkington, Flexford, Highclere, Newbury.
Kenneth John Riley, Beauford, Park Lane, Fareham.
Lt.-Col. Peter Milner Wiggin, Ashe Warren House, Overton, Basingstoke.
Lord Northbrook, Shawlands Farm, Hursley.

BOOKS AND PAPERS RECEIVED

Archbold's Criminal Pleading, Evidence and Practice. Thirty-third Edition. Fifth Cumulative Supplement. May 1, 1955. London. Sweet and Maxwell, Ltd., 2 and 3 Chancery Lane.

The Howard Journal, 1955. Published by and obtainable from The Howard League for Penal Reform, Parliament Mansions, Abbey Orchard Street, London, S.W.1. Price 3*s*.

REVIEWS

Stone's Justices' Manual. 87th Edition. Edited by James Whiteside, Solicitor, Clerk to the Exeter Justices and J. P. Wilson, Solicitor, Clerk to the Sunderland Justices. London: Butterworth & Co. (Publishers) Ltd., 88, Kingsway, W.C.2. Shaw & Sons, Ltd. Price, Thin Edition, 82s. 6d., by post 2s. 4d. extra. Thick Edition 77s. 6d. net, by post 2s. 6d. extra.

To have produced a new *Stone* in the middle of May is an achievement upon which all concerned, not least the editors, are to be congratulated. Only those who have used this yearly practice over a long period can realize the immense amount of work involved and can appreciate its real value. It contains almost everything a magistrate needs, and is a pointer to all the sources of further information that a clerk or a practitioner is likely to want. In spite of the many additions that have to be made each year the size of the book, by dint of pruning and revision on the part of the learned and experienced editors remains about the same. How the work of magistrates has grown is indicated to some extent by a comparison of the *Stone* of today, which has about 3,000 pages with an edition of some 60 or 70 years ago, when it was a single volume of less than 1,000 pages.

Although 1954 saw no major statute such as the Magistrates' Courts Act, 1952, or the Justices of the Peace Act, 1949, there were many statutes, as well as many new regulations and orders of importance to the magistrates' courts, so that this new edition is absolutely necessary to all who are accustomed to consult the work. Also, nearly a 100 additional cases are cited, and some of these receive special notice in the preface. Once again we urge the importance of reading carefully the observations of the editors in the preface. They provide some useful explanations and include some warnings against what might be dangers in relation to such matters as the coming into operation of a statute. The arduous task of resetting the work in " modern-wide " type is now nearly complete.

The law relating to visiting forces has proved complicated and difficult, as some of the inquiries addressed to us have shown. The matter is adequately noted and brought up to date, and it is pointed out that orders made in the United Kingdom for the maintenance of wife or children, and affiliation orders, are now enforceable against members of visiting forces under the general law, so nullifying the decision in *R.* v. *Birkenhead Justices, ex parte Smith* [1954] 1 All E.R. 503; 118 J.P. 203.

We are in accord with the editors in expressing the hope that the case of *ex parte How* [1953] 2 All E.R. 1562; 118 J.P. 75, will prove to be the last of the series of applications for orders of *certiorari* based on the retirement of a clerk with the justices when, at the conclusion of a case, they retire to consider their decision. Readers are referred to the pronouncements of the Lord Chief Justice and the President of the Probate, Divorce and Admiralty Division as their guide in this matter.

The question whether a child may be ordered to pay compensation or damages in addition to the maximum fine of 40*s.* has been the subject of much discussion, and articles have appeared in this journal which show that there is a sharp division of opinion. It must have been impossible to include in the new *Stone* a reference to the article by Mr. J. P. Wilson which appeared in our issue of March 19, but we hope it may appear in the notes to s. 32 of the Magistrates' Courts Act, 1952, in the next edition. It has sometimes been suggested that the notes which appear as notes (*r*) and (*s*) on p. 66 of the present edition seem inconsistent. Mr. Wilson's article explains how they can be reconciled with one another.

The Town and Country Planning Act, 1954. By D. P. Kerrigan and J. D. James. London: Butterworth & Co. (Publishers) Ltd. 1955. Price: 27s. 6d. net.

We have already mentioned publications on the subject of the Town and Country Planning Act, 1954, and are glad to have the opportunity of noticing this excellent annotation of that Act. The reader will be familiar with the fact that the Town and Country Planning Act, 1947, set up a scheme for transferring the development value of land to the State, whilst compensating the persons who would otherwise have been entitled to that value, out of money to be raised by Parliament for that purpose. For some time there were periodical reminders to potential claimants, of the need for lodging the necessary particulars from which claims could be established, and then came a general election and a reversal of the scheme set up in 1947, before it had come into full effect. The Town and Country Planning Acts, 1953 and 1954, have to be considered together, and compared with the Act of 1847, if the result is to be understood; taking the Acts together, the mode of dealing with land affected by them becomes extremely intricate. The learned authors describe the Acts as now keeping a running account, from which payments may be made when development value cannot be realized or is restricted, as well as when land is compulsorily acquired. The underlying principles of all this are explained in their general introduction, which makes the position as clear as is reasonably possible in general terms. They proceed then to annotate the Act of 1954 section by section, with cross-references to the Acts of 1947 and 1953 (as annotated in *Hill on Town and Country Planning*, 4th edn., and second supplement thereto). The notes, section by section, are voluminous, but so far as we can see complete. There is inevitably a good deal to be followed up in statutory instruments which are appended to the work. To our knowledge, this block of legislation is found to provide peculiar difficulty, not merely for the young lawyer but for experienced practitioners. Unfortunately it is largely for the specialist; the solicitor in general private practice will often do well to obtain a second opinion, since substantial sums of money may turn upon technical points, and a client's interests may be affected by one of the anomalies which inevitably arise, when this sort of legislation first attempts a general panacea and then proceeds to pull it to pieces while private rights are still in the melting-pot. So far as the Acts can be mastered by the busy practitioner, we are sure that the unusually full notes of the present learned authors will be found as helpful to his doing so as anything yet published.

Parliamentary Elections. By A. Norman Schofield. London: Shaw & Sons Ltd. Price 70s. net.

This important work was published in the first week of May, so it must have been put in hand before it was known that the general election would be held that month. The learned author and publishers may have had it in mind to produce in time for an autumn election, if one took place this year. It is a pity that it only came upon the market just as Parliament was being dissolved, and a copy did not reach us for review in time to be noticed before the general election was completed. We speak of it advisedly as an " important " work, for it seems to include everything required by registration officers, returning officers, and election agents. Since the first edition appeared on the heels of the Representation of the People Act, 1949, there have been three statutes and three sets of regulations, besides a number of orders and official circulars. Persons concerned with the election now just passed will thus have been greatly helped, if they were able to secure a copy of the new edition in time. As showing how completely up to date it is, attention may be drawn to a Home Office Memorandum issued in April, 1955.

Lawyers and officials familiar with the mechanics of parliamentary elections will recognize the standard information, such as specimens of ballot papers good and bad, and the information given about illegal practices, including those which can occur by inadvertence. All this standard information is clearly set out with convenient cross-headings. The learned author gives also a short chapter upon jury lists, which are involved in the same processes as the registration of electors.

An appendix comprising not quite half the book contains the text of the statutes now governing the parliamentary franchise and the conduct of parliamentary elections, with the various sets of regulations, as made in 1950 upon the passing of the Representation of the People Act, 1949, and as amended since; the rules governing election petitions; and the Home Office circulars (one of which, as we have said, has come out in the last few weeks).

The publishers suggest in their advertising circular that the work might usefully be placed in every public library, and we agree. There are a number of matters which it is just as well for the ordinary member of the public to have an opportunity of studying such, for example, as to the provisions under which the Boundary Commissioners deal with constituency boundaries, about which there has been so much talk in Parliament and in the press within the last 12 months. For our own readers, who are obliged to deal with the conduct of elections year by year and with franchise problems, there can be no doubt that this is a book which ought to be obtained.

Justice at Work. The Human Side of the Law. By James Avery Joyce, Barrister-at-Law. London: Pan Books, Ltd., 8 Headfort Place, S.W.1. Price 2s.

This is a revised and enlarged edition of a book first published in 1952, which we reviewed at 116 J.P.N. 605.

As Dr. Joyce points out in his preface, much has happened since 1952 in the legal sphere, and, like all books written about law, it had soon become partly out of date.

We have no need to add to what we said in 1952, except once again to recommend the book, at its astonishingly low price, to anyone who, not in search of a textbook on law, wishes to be enlightened and enlivened by the reading of a trustworthy, comprehensive, and often amusing account of the making, history and working of the law of this country.

EARNERS AND LEARNERS

The Railway Strike has affected many millions of people—in a literal sense, in all walks of life; and the difficulties of the daily journey to work and getting home again have exercised the bodies as well as the minds of those who must earn their daily bread by the sweat of their brow. The fortunate few who live within two or three miles from their offices or workshops may have found consolation, for the unaccustomed exertion of walking, in bringing long-unused muscles into play and setting the blood coursing more freely in their veins. Apart from such physical satisfaction there is a curious pleasure to be derived from seeking out and traversing unfamiliar byways and reaching one's destination by roads and paths where the roar of traffic is reduced to a distant murmur, blending not unpleasingly with the bird-songs and the rustle of leaves in the fitful spring sunshine. There may even be a few stalwart spirits who, having found new delights in the daily walk to and from their work, will forswear for evermore the discomforts of bus-queues, crowded vehicles and the all-pervading noise and bustle of the main thoroughfares.

Such people are unfortunately a small minority. The tendency in recent years—at any rate in our great cities—has been to encourage the working population to move further and further out from the industrial and commercial centres; the vast mass of dwellers in the suburbs neither endure the hell of crowded tenements in the smoke and din of factory-areas, nor enjoy the paradise of isolated cottages amid the unspoilt works of nature; but make their abode in a limbo of newly-built streets and shops which impose upon them all the inconveniences of remoteness from town with few of the pleasures of life in the country. For these people the motor car is an essential, and during recent weeks they have braved the rigours of congested roads, traffic-blocks and overcrowded parking places on the weary trek to and from the central areas where their vocation lies.

Reports from the Ministry of Transport have given a graphic picture of the tens of thousands of road-vehicles crawling, in line abreast, across the bridges into London; stationary for 10 minutes at a time, edging foot by foot towards their journeys' end. Tribute has been deservedly paid to the patience and courtesy displayed by drivers in the face of frustration and delay. If the enforced improvement in road-manners during the strike period becomes a habit, the outlook for the future is bright indeed.

Some few weeks ago, when road conditions were what is called normal, *The Times* published an appraisement by a Parisian taxi-driver who drove across London in a small hired car "amid the compact mass, solid and motionless, of what was meant for motion." His interesting conclusion was that "traffic-jams suit our national temperament—as they do *not* suit the French." Those who knew Paris in pre-war days, before horn-blowing was prohibited, will have no hesitation in agreeing with him. The difficulties of crossing Piccadilly Circus are as nought compared with the hazards faced by a pedestrian endeavouring to find his way across the Place de la Concorde, where "queue-crashers and underhand infiltration tactics" are still a commonplace. Twenty years ago the roar of overworked engines and the shrilling of horns, in every note of the gamut, made confusion worse confounded, and frightened all but the boldest and most active off the roads, which the motorist in those days regarded as his exclusive province. Things have improved since then, but our Parisian visitor was amazed at the discipline among London drivers in contrast to those of his own city. His outstanding emotion was astonishment at the difficulties our motorists face and at the congestion we tolerate in streets that are pitifully inadequate for the volume of traffic they have to take.

Despite these compliments, the toll of accidents on British roads remains a baffling problem. Recent debates in the House of Lords on the new Road Traffic Bill revealed an extraordinary lack of unanimity on the appropriate measures to reduce deaths and injuries on the roads. An enormous body of case-law has been formulated since the passing of the 1930 Act; the revised regulations and the new Highway Code have yet to be tested. Every now and then some new case discloses the grave risks which, despite the spate of safety-propaganda, some drivers persist in incurring.

At a recent hearing before the Nottingham bench a police-mechanic gave evidence of the defects he had found on examination of a 24 year old car, the description of which recalls the film *Geneviève*. It had an inefficient speedometer, no windscreen-wiper, silencer or horn, an insecure bumper-bar in front and two at the rear, loose running-boards and two discoloured windows. The owner of this venerable relic, who pleaded guilty, was fined a total of £10 10*s*.

A case at Taverham, Norfolk, contained elements of pathos as well as humour. The woman holder of a provisional licence, summoned for aiding and abetting her daughter (who held a licence of the same kind) in driving a van without being accompanied by a competent driver, explained to the court that she had been restricted to a provisional licence for no less than 11 years; she had "taken the test" (how many times was not specified) but had "not passed yet." The clerk to the bench euphemistically suggested "They don't think you are very good at driving?" to which the defendant hopefully replied that she "kept on trying." The daughter, giving evidence, stated that the only reason for her mother's failure to pass was that she was unable to read or write, a form of incapacity that must be as rare as the dogged persistence that inspires this candidate to carry the stigma of "L" plates (if such it be) for the space of 11 years. It seems a pity that there is no loop-hole in the Act to enable the licensing authority to admit her to a kind of honorary degree—perhaps that of Learner-Driver Emeritus—so that she may at last take her place in the ranks of fully-fledged motorists.

Such an offence as this will seem, to many, venial enough. With the reckless driver, the votary of speed for speed's sake, the man who cannot or will not properly control his vehicle, the matter is different. For such offenders there is a dire warning in the tragic case which, though it has not found its way into the Law Reports, is vouched for by writers of unexceptionable accuracy. Readers of Ovid's *Metamorphoses* will remember how Phaëthon, son of Helios the Sun-God, in his youthful presumption pestered his father to allow him to drive the Chariot of the Sun across the heavens for one day, although he had passed no test, had had no instruction and was not the holder even of a provisional licence. In an evil hour Helios yielded to his entreaties; but Phaëthon, weak and inexperienced, quickly lost control of the vehicle which plunged out of its course and came so near the Earth as almost to set it on fire. This recklessness had obviously to be dealt with on the spot; and Zeus, Father of Gods, and Men, without even the formality of a summons, struck the wretched youth dead with a flash of lightning and hurled him into the River Eridanus. There is a good deal to be said for summary procedure, in some cases, after all.

A.L.P.

PRACTICAL POINTS

All questions for consideration should be addressed to "The Publishers of the Justice of the Peace and Local Government Review, Little London, Chichester, Sussex." The questions of yearly and half-yearly subscribers only are answerable in the Journal. The name and address of the subscriber must accompany each communication. All communications must be typewritten or written on one side of the paper only, and should be in duplicate.

1.—Evidence—*Prisoner's history—What may be given—Application of Criminal Justice Act*, 1948, *s.* 12.

An adult defendant was convicted at a magistrates' court of larceny as servant and after announcing conviction the court desired the prosecutor to inform them of the prisoner's character and antecedents. The prosecutor was about to inform the court—as part of the prisoner's antecedents—that some 18 months earlier the prisoner had been found guilty by another court of larceny whilst a servant and had been given a conditional discharge, but was stopped from doing so on the ground that this disclosure to the court was not legally possible. Do you know of any justification for this objection? Is this, for instance, a proper construction of s. 12 (1) of the Criminal Justice Act, 1948? T. ERCOS.

Answer.

The effect of s. 12 (1), *supra*, was explained by the Court of Criminal Appeal in *R.* v. *Harris* [1950] 2 All E.R. 816; 114 J.P. 535. It is proper to mention that the defendant on a previous occasion was found guilty either on his own confession or by the verdict of a jury or the judgment of a court of an offence. This is part of his antecedent history, although it does not count as a previous conviction for the purpose of making him liable to a greater maximum penalty.

2.—Licensing—*Provisional grant—Premises not constructed—Proposal to alter plans—Procedure.*

In 1947 justices granted a provisional licence and approved plans for the construction of a licensed house. This provisional grant was confirmed by the confirming authority. The house has never been constructed and the applicant now proposes to apply at the next annual general licensing meeting for the justices' approval of plans entirely different from those approved and confirmed in 1947. The question is, have the justices power to approve these fresh plans at the annual general licensing meeting and subsequently make a final order, or should the applicant make a fresh application for a new provisional licence, advertising his intention to do so, etc., in the normal way? OLEICA.

Answer.

Application must be made afresh for the grant of a provisional licence. If this is granted, the original scheme will be abandoned. Licensing justices have no power to agree to alterations to plans approved by them on making a provisional grant. Their powers under s. 134 of the Licensing Act, 1953, have relation "to premises for which a justices' on-licence is in force"; a planned new building, even where it is the subject of a provisional grant of an on-licence, falls outside this description—for such a grant "shall not be valid until the licensing justices have declared it final" (Licensing Act, 1953, s. 10 (2)).

3.—Licensing—"*Supper-hour extension*"—*Whether it operates so as to prohibit consumption by residents otherwise than at a meal.*

An interesting situation has arisen locally with regard to what are popularly called "supper licences" in force in respect of certain hotels which have a substantial residential as well as bar trade.

A newly appointed inspector of police maintains that under the provisions of s. 104 (4) of the Act residents in the hotels are not allowed to have a drink "during that hour" (locally 10-11 *p.m.*) except with a meal as stipulated in the subsection. It is submitted on behalf of the licensees that by virtue of s. 100 (2) residents are not restricted to the permitted hours for consumption of drinks and that the effect of s. 104 is that the permitted hours are under certain circumstances extended to one hour at the end of the evening permitted hours. The licensees contend that the conditions laid down in s. 104 (4) apply to the consumption of drinks by non-residents only and that the exemption in favour of residents in s. 100 (2) is not affected.

(*a*) The inspector contends that the conditions in s. 104 (4) are absolute and that if they were not intended to apply to residents there would be some such qualification as "these conditions shall not apply in the case of residents."

(*b*) The inspector stipulates that either the supper licences are terminated by the licensees or the conditions in s. 104 (4) are strictly observed so as to include residents.

The licensees are greatly concerned because, especially during the summer months, they are frequently asked to supply meals after 10 *p.m.*, and the guests require drinks. If the inspector's view is correct the hotel residents who would normally have had their evening meal before 10 *p.m.*, could not have a drink (unless they had another meal in the dining room) between 10 and 11 *p.m.* The inspector has intimated that he does not propose taking any action until the licensees have had a reasonable time to consider what to do.

I shall therefore be very much obliged by an opinion on the problem which has never been raised by the local police previously and in respect of which I have not been able to find any authority. I would also be glad to know if there is any legal definition of what constitutes a "meal"—and the authority. OARD.

Answer.

We think that the construction which the police inspector places on the law is not the correct one. In our opinion, the enactment in s. 104 (4) of the Licensing Act, 1953, that intoxicating liquor may only be sold during the "supper-hour extension" for consumption at a meal should not be construed as abrogating by implication the saving provision of s. 100 (2) (*a*) that nothing in the general prohibition of the sale and consumption of intoxicating liquor except during permitted hours shall prohibit or restrict the sale or supply to, or consumption by, any person of intoxicating liquor in any premises where he is residing.

We base this opinion on a consideration of part VII of the Licensing Act, 1953, as a whole. The High Court does not generally favour the abrogation by implication of any enactment (*cf. Foster's Case* (1614) 11 Rep. 63a; *Re Chance* (1936) 1 Ch. 266). There seems to be no reason to suggest that the legislature intended that a benefit designed for people taking a meal after the ordinary permitted hours should operate to modify, or, indeed, repeal, a previously enacted benefit designed for the convenience of residents in the licensed premises, and an interpretation based on this suggestion should not be adopted unless it is inevitable (*cf. G.W. Rly.* v. *Swindon & Cheltenham Rly.* (1884) 9 App. Cas. 787; *Lewis* v. *Berrey* (1936) 1 Ch. 274).

There is no legal definition of a "meal" for the purposes of s. 104 of the Licensing Act, 1953. In *Solomon* v. *Green* (1955) 119 J.P. 289, a Divisional Court carefully refused to give a decision which could be cited to justices as to what a meal was or whether a sandwich or a cocktail sausage was a meal. The Court regarded the matter as purely a question of fact for the justices to decide. *See* also our vol. 89 (1925) at p. 533, where we reported a case where a metropolitan magistrate held, on the facts before him, that a sandwich was a meal.

4.—Magistrates—*Jurisdiction and powers—Offence committed in one petty sessional division—Jurisdiction to try it in another one.*

I beg to inform you that the following problem has recently arisen within this area. A summary offence was wholly committed in A petty sessional division, in a parish where this division adjoins B petty sessional division. To avoid excess travelling, with the consequential time expenditure by witnesses, application was made for process to enable the case to be dealt with by a magistrates' court within B division. It has been stated that the jurisdiction of this case lies with the magistrates of A petty sessional division and must, therefore, be dealt with by them. In view of the provisions of ss. 2 (1) and 3 of the Magistrates' Courts Act, 1952, I should be obliged if you would give me the benefit of your advice on this matter, please. S. NEWMARK.

Answer.

We assume both divisions are in the same county, and in that event, by virtue of s. 2 (1) of the Magistrates' Courts Act, 1952, there is no legal bar to the case being tried by a court in the B division.

5.—Music, etc., Licence—*Breach of condition—Authority to prosecute.*

The council of this non-county borough have adopted part IV of the Public Health Acts Amendment Act, 1890. The borough is policed by the county police, towards the cost of which the borough council contribute. The licensing justices in the borough are county justices, and their duties include the granting and renewal of licences for public music, singing, and dancing in the borough. The police are desirous of taking proceedings against a licensee for breach of the conditions of his music, singing and dancing licence, and the question has arisen whether they have power to take such proceedings, or whether the proceedings should be taken by the local authority. In this connexion attention is drawn to s. 6 of the Act of 1890, which provides that offences under the Act may be prosecuted in like manner as offences under the Public Health Acts.

Section 296 of the Public Health Act, 1936, provides that all offences under that Act may be prosecuted under the Summary Jurisdiction Acts, but s. 298 of the same Act provides that proceedings under that Act shall not, without the written consent of the Attorney-General, be taken by any person other than a party aggrieved, or a council or body whose function it is to enforce the provisions or byelaws in question, or by whom or by whose predecessors the byelaw in question was made.

Section 277 of the Local Government Act, 1933, provides that a local authority may by resolution authorize any member or officer of the authority to institute or defend proceedings on their behalf.

On p. 1633 of *Stone* (1954) it is stated that the restrictions imposed by s. 298 of the Public Health Act, 1936, and s. 277 of the Local Government Act, 1933, must be observed.

Your valuable opinion is sought on the following points:

1. Can the police be said to be a party aggrieved under s. 298 of the Act of 1936, as keepers of the peace, by the breach of the conditions, and so empowered to take proceedings ?

2. Could the local authority under s. 277 of the Local Government Act, 1933, authorize a police officer to take proceedings on their behalf having regard to the fact that they are not the police authority in the borough, but are entitled by agreement to call upon the services of the county police in the borough ?

3. Could the licensing justices, either as a party aggrieved, or as a body whose function it is to enforce the provisions in question, under s. 298 of the Act of 1936, authorize the police to take proceedings on their behalf before another bench of magistrates ?

4. Could any of the residents in the vicinity of the licensed premises, who have complained of the nuisance caused to them by a breach of the conditions of the licence be said to be a party aggrieved under s. 298 of the Act of 1936, and authorize the police, as keepers of the peace, to take proceedings on their behalf ?

5. Generally on the matter. ORGO.

Answer.

The references to ss. 296 and 298 of the Public Health Act, 1936, should be to ss. 251 and 253 of the Public Health Act, 1875, which are still alive for purposes of the Act of 1890. The questions asked were before the Divisional Court in *Oberst* v. *Coombs*, *ante*, p. 179. The answer to each question is " no," as we advised at 103 J.P.N. 290.

6.—Private Streets—*Provision of new street by council—Liability of frontagers for making up.*

The council operate the Private Street Works Act, 1892. They have previously made and dedicated two streets, A to B and C to D. They then purchased an intervening unmade and undeveloped length of land, B to C, which is about 60 *ft.* wide. They purchased this land subject to a right of way over a footpath which lies between B and C on its east side, and throughout its length. They have constructed a sewer parellel to and near the footpath on the length of land so purchased by them.

The council now wish to make a street between B and C and so to provide a thoroughfare from A to D, and they seek, if possible, to recover the cost of making this length of street from the owners of undeveloped land abutting on each side of the unmade land which the council own between B and C. The proposed street, if constructed, will enhance the value of the land on each side although, as far as is known, there is no present intention to develop any part of that land. In your opinion can the council recover any part of the cost of constructing the proposed street from the owners of the undeveloped land abutting on each side of the council's land between B and C ? *See Hull Local Board of Health* v. *Jones* (1856) 21 J.P. 37.

P. CURIOUS.

Answer.

No, in our opinion. They are not in a position to express their dissatisfaction under the Act of 1892 with that which they have done themselves: *see* the case cited.

7.—Rating and Valuation—*Police houses—Intermittent voids.*

The county police authority are the owners of certain houses in this non-county borough, and also tenants of certain houses in the borough. In each case the county police authority is shown in the rate book as the rated occupier. These houses are physically occupied by members of the county police force, and at various times certain of these properties become vacant as officers are moved from one part of the county to another, in the course of their duties.

The treasurer to the county police authority has recently requested the borough treasurer to make rate refunds in respect of two of these houses which were vacant for a number of days in the course of the current half year. The borough treasurer has asked my opinion, and I advised that these refunds should not be made. I base my opinion, by analogy, on the decided case of *Associated Cinema Properties, Ltd.* v. *The Borough of Hampstead* [1943] 2 All E.R. 696, affirmed by the Court of Appeal [1944] 1 All E.R. 436; 108 J.P. 155. That case decided that a mere intention to occupy in hypothetical circumstances is not rateable occupation. By analogy, therefore, the police authority, who never intend to give up occupation, and who install their officers at the earliest opportunity in such houses as may become vacant from time to time, are clearly in continuous occupation of those premises, and a rate refund is, in my view, not payable.

I shall be glad if you will let me know whether or not you agree with my opinion, and would be grateful if you could refer me to any other cases in point. ARROW.

Answer.

We agree, for the reasons you give. Within the scope of an answer we can not balance the cases, but *see* remarks of Wrottesley, J., in *London and North Eastern Railway Appeal* (1946) 109 J.P. 269, as set out in *Ryde*.

8.—Sunday Entertainments—*Music, etc., licences—Cinematograph licences—Varying conditions.*

Licences in respect of the above are in existence for cinemas in my division, with a condition attached, *inter alia*, that no Sunday entertainment will commence before or finish later than the times set out in the licences. As the licensing authority, the justices reserve the power in any case to dispense with or modify any of the conditions attaching to such licence or to make any other conditions or regulations with regard thereto. If an application is made to the justices to vary the above conditions, by substituting an earlier opening hour, the question arises as to the procedure to be adopted in regard to such application.

It appears to me:

(*a*) That the application can be heard at a special session.

(*b*) That there is no statutory requirement with regard to publication of notice of such application in the press, and that the publication is entirely a matter for the justices to decide.

(*c*) That on the hearing of such application it is for the justices to decide whether objectors be heard.

Are these views correct? O. LABRADOR.

Answer.

The Sunday Entertainments Act, 1932, makes no provision for altering conditions attached to licences under the Act; but it seems, in the case in point, that the conditions are so worded that there is reserved to justices the power to vary them. Whenever such a power is included in " conditions " it is good practice to include a mention of the appropriate procedure for exercising the power—this, apparently, has not been done here.

(*a*) The variation may be made by justices at special sessions (Public Health Acts Amendment Act, 1890, s. 51 (2)) being also a petty sessions (Cinematograph Act, 1909, s. 5).

(*b*) We agree.

(*c*) We agree; but it accords with good practice to hear any person who desires to make objection on grounds which the justices think relevant.

9.—Weights and Measures—*Coal—Contract stipulation that customer accepts weight stated by colliery.*

Referring to your answer to P.P. 11 at 119 J.P.N. 48, I suggest that the seller of the coal might be prosecuted for failing to comply with s. 22 (1) of the Weights and Measures Act, 1889. This section requires that, unless the road-vehicle used for delivery is provided by the purchaser, the coal shall be weighed over a stamped weighing-machine on or near the place from which the coal is brought, *i.e.*, the railway-yard at which the truck of coal arrives from the colliery; and a separate weight-ticket handed in with each load (*Stangoe* v. *Slatter* (1896) 60 J.P. 342). The purpose of s. 22 is to ensure that any shortage in the weight of the coal (due to pilferage in transit or incorrect taring of the railway-truck) is not passed on to the purchaser.

If, however, there is no suitable weighing-machine available, the customary procedure is for the purchaser to agree to accept nominal delivery ex truck at the railway-yard, and to make separate arrangements for the haulage of the coal to his own premises.

You conclude by saying that " this is not really selling by weight, but by the waggon," yet I respectfully venture to suggest that there has, in fact, been a weighing with reference to the sale at the colliery (to determine not only the price of the coal, but also the railway freight charges) and that this is a sale by weight: *Mattinson* v. *Binley* (1908) 72 J.P. 346; *Blackladge* v. *Bolshaw* (1908) 72 J.P. 383; *Evans* v. *Jones* (1908) 72 J.P. 481. SASINE.

Answer.

We agree that the facts might disclose an offence against s. 22 (1) as suggested by our correspondent.

On the second point we did not make the definite statement " this is not really selling by weight, but by the waggon " but only that this might be argued. In our opinion the matter is not free from doubt and we do not think the cases cited conclude the matter.

OFFICIAL AND CLASSIFIED ADVERTISEMENTS, ETC. *(Contd.)*

CITY OF MANCHESTER

Appointment of Whole-time Male Probation Officer

APPLICATIONS are invited for the appointment of a whole-time Male Probation Officer.

Applicants must not be less than 23 nor more than 40 years of age, except in the case of a serving probation officer.

The appointment will be subject to the Probation Rules, 1949 to 1955, and the salary will be according to the scale prescribed by those Rules.

The successful applicant will be required to pass a medical examination.

Applications, stating age, present position, qualifications and experience, together with not more than two recent testimonials, must reach the undersigned not later than July 2, 1955.

HAROLD COOPER,
Secretary of the Probation Committee.

City Magistrates' Court,
Manchester, 1.

EAST SUSSEX COUNTY COUNCIL

Assistant Solicitor

APPLICATIONS are invited from persons with experience in local authority administration for the above appointment which will become vacant on October 1, 1955, in the office of the Clerk of the County Council. Salary in accordance with Grade A.P.T. VI of the National scales (£825—£1,000). The appointment is superannuable and a candidate to be successful must pass a medical examination. Applications, stating age, qualifications and experience, together with the names of three persons to whom reference can be made, should be sent to me by July 4, 1955.

Candidates must state whether they are related to any member or Senior Officer of the Council, and canvassing will disqualify.

H. S. MARTIN,
Clerk of the County Council.

County Hall, Lewes.

NOTTINGHAMSHIRE COUNTY COUNCIL

Appointment of Methods Officer

APPLICATIONS are invited for the above appointment on my staff at a salary in accordance with Grade A.P.T. V (£750—£900). The person appointed will be responsible to me for setting up and maintaining a small methods section but experience of organization and methods work though desirable is not essential as arrangements will if necessary be made for the successful candidate to receive training after he has been appointed.

Applications, with the names of two referees, should reach me by July 7, 1955.

A. R. DAVIS,
Clerk of the County Council.

COUNTY BOROUGH OF SOUTHAMPTON

Appointment of Assistant Solicitor

THE duties include advocacy, conveyancing and general legal work. Salary according to experience within scale £690 × £30—£900. Closing date June 30. Application form from the undersigned.

A. NORMAN SCHOFIELD,
Town Clerk.

Civic Centre, Southampton.

COUNTY BOROUGH OF NEWPORT

Assistant Solicitor

SALARY £690 × £30—£900 per annum (commencing at £780 if the person appointed has two years' legal experience). The post is permanent and superannuable. N.J.C. Conditions of Service, as adopted by the Council, apply. Applications, giving age, qualifications, experience, and names and addresses of three referees, to reach the Town Clerk, Civic Centre, Newport, Mon., by July 4, 1955. Relationship to a member or senior officer of the Council must be disclosed. Canvassing, direct or indirect, will disqualify.

J. G. ILES,
Town Clerk.

Civic Centre,
Newport, Mon.

BOROUGH OF FARNWORTH

Deputy Town Clerk

APPLICATIONS for this post are invited from Solicitors with Municipal experience.

Salary—A.P.T. Grade V.

Further particulars and forms of application obtainable from the undersigned. Closing date for applications July 2, 1955.

NORMAN MITCHELL,
Town Clerk.

Town Hall,
Farnworth, Lancs.

COUNTY BOROUGH OF DONCASTER

APPOINTMENTS to be filled by Solicitors with the appropriate qualifications and experience:

Senior Assistant Solicitor—Salary £900 × £40—£1,100.

Assistant Solicitor—Salary £690—£900 (Special Class).

The appointments are superannuable, subject to satisfactory medical examination, and will be terminable by one month's notice. Canvassing disqualifies.

Applicants must state whether or not they are related to any Member or Senior Officer of the Council.

Applications are to be sent to the undersigned not later than July 7.

H. R. WORMALD,
Town Clerk.

1 Priory Place,
Doncaster.

URBAN DISTRICT COUNCIL OF HINCKLEY

Appointment of Assistant Solicitor

APPLICATIONS are invited for this appointment at a salary in accordance with the National Joint Council Scale (£690—£900 per annum). Superannuable post, subject to medical examination. N.J.C. Service Conditions apply; appointment terminable by one calendar month's written notice on either side.

Applications, with full details of experience, with the names and addresses of two referees, must reach the undersigned not later than July 2, 1955.

Canvassing will disqualify.

BRYAN R. OSTLER,
Clerk of the Council.

Clerk's Department,
23 Station Road,
Hinckley, Leics.

BOROUGH OF GILLINGHAM

Appointment of Assistant Solicitor

APPLICATIONS are invited for the above appointment. Experience of conveyancing and advocacy necessary, but previous local Government service not essential. The appointment will offer wide opportunities for obtaining all round experience of local Government, law administration.

Salary in accordance with Grade A.P.T. VI of the National Scale, *i.e.*, £825—£1,000. The National conditions of service and the Local Government Superannuation Acts, 1937/53 will apply to appointment.

The Council would be prepared to assist with housing accommodation in an appropriate case.

Applications, giving the names of two referees, to be forwarded to the undersigned by not later than July 4, 1955.

Canvassing directly or indirectly will disqualify.

FRANK HILL,
Town Clerk.

Municipal Buildings,
Gillingham, Kent.
June 17, 1955.

APPOINTMENTS

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